(1)

Supreme Court, U.S.
FILED

98 49 JUL 1 - 1998

OFFICE OF THE CLERK

NO.

In The

Supreme Court of the United States

October Term, 1997

Immanuel Grinn,

Petitioner,

vs.

Village of North Palm Beach, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425

40 pp

QUESTIONS PRESENTED

May a court adopt recommendations from a magistrate judge to dismiss a *pro se* U.S.C. 42 § 1983 Complaint for failure to state a claim upon which relief can be granted if the magistrate conducted no hearings [28 U.S.C. § 636(b)(1)], gave no opportunity to present evidence or bring forward witnesses and thus denied plaintiff fundamental due process?

May a court then dismiss with prejudice, without plaintiff "given at least one chance to amend" [*Bank v. Pitt*, 928 F.2d 1108, 1111 (11th Cir. 1991)] that *pro se* Complaint -- against a municipality and its policymaking officers in their official and independent capacities -- predicated on a deprivation under color of state law of a fundamental, substantive Constitutional right: to petition the government for redress of a grievance of public concern?

Is a § 1983 or § 1985(3) Complaint against a municipality and/or its officers subject to a "heightened pleading" standard [*Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, et al.*, 507 U.S. 163, 164 (1993)]?

Subsidiary questions are unconstitutionality of laws facially and/or as applied, standards of "official" and "personal" immunity, standards of conspiracy, and right to jury trial.

LIST OF PARTIES TO THE PROCEEDING

In addition to THE VILLAGE OF NORTH PALM BEACH; named in the caption:
LAWRENCE B. KELLEY, individually, personally, and/or in his official capacity as Member of Village Council;
VIRGINIUS A. MARKS, individually, personally, and/or in his official capacity as Member of Village Council;
CHARLES R. O'MEILIA, individually, personally, and/or in his official capacity as Member of Village Council;
SAMUEL T. VALENTE, individually, personally, and/or in his official capacity as Member of Village Council;
GAIL H. VASTOLA, individually, personally, and/or in her official capacity as Member of Village Council;
GEORGE W. BALDWIN, individually, personally, and/or in his official capacity as Village Attorney;
DENNIS W. KELLY, individually, personally, and/or in his official capacity as Village Manager;
KATHLEEN F. KELLY, individually, personally, and/or in her official capacity as Village Clerk.

Because of changes on the Village Council, the individuals named below should be substituted in title in their official capacities only. Above named individuals are retained as defendants in their individual and personal capacities.

Substitute EDWARD M. EISSEY for LAWRENCE B. KELLEY
Substitute DAVID B. NORRIS for VIRGINIUS A. MARKS
Substitute JOSEPH A. TRINGALI for SAMUEL T. VALENTE

TABLE OF CONTENTS

	page
Questions Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	2
Constitutional Provisions	3
Proceedings In Courts Below	4
History	8
Three Examples of Village Intrusions On My Constitutional Rights	8
Precedent In Filing Petitions for Referendum	10
"Adult Entertainment"	12
The Four Events	13
First Event	13
Second Event	17
Third Event	18

Contents

Page

Fourth Event..... 19

Reasons for Granting the Writ

The Petition Should Be Granted Because The United States Court Of Appeal Has Sanctioned Such Departures from Its Own Previous Decision And 28 U.S.C. § 636(b)(1) By The District Court In Dismissing A *Pro Se* § 1983 Complaint, As To Call For An Exercise Of The Supreme Court's Power Of Supervision..... 20

The Petition Should Be Granted Because The United States Court Of Appeal Has Decided The Dismissal Of A *Pro Se* § 1983 Complaint Of Violation Of A First Amendment Right In A Way That Conflicts With Relevant Decisions Of The United States Supreme Court.....21

Conclusion..... 30

TABLE OF CITATIONS

Cases Cited:

Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970) 25

Albright v. Oliver, 510 U.S. 266 (1994)..... 24

Bank v. Pitt, 928 F.2d 1108 (11th Cir. 1991) i,21

Bell v. Hood, 327 U.S. 678 (1946) 24

Broadrick v. Oklahoma, 413 U.S. 601 (1973)..... 29

Contents

	Page
Brockett v. Spokane Arcades, Inc. 472 U.S. 491 (1985)	29
Bryan County Commissioners v. Brown, 520 U.S. --, 137 L.Ed.2d 626 (1997)	25,26
Buckley v. Valeo, 424 U.S. 1 (1976)	29-30
Butz v. Economou, 438 U.S. 478 (1978)	27
City of Canton v. Harris, 489 U.S. 378 (1989)	25,26
Conley v. Gibson, 355 U.S. 41 (1957)	6,21,22,23
Cruz v. Beto, 405 U.S. 319 (1972)	22
Curtis v. Loether, 415 U.S. 189 (1974)	26
Davis v. Scherer, 468 U.S. 183 (1984)	27
De Jonge v. Oregon, 299 U.S. 353 (1937)	28,29
Elrod v. Burns, 427 U.S. 347 (1976)	23
Estelle v. Gamble, 429 U.S. 97 (1976)	22
Ex Parte Young, 209 U.S. 123 (1907)	28
Flagg Bros. Inc. v. Brooks, 436 U.S. 149 (1978)	24
Gomez v. Toledo, 446 U.S. 635 (1980)	25
Haines v. Kerner, 404 U.S. 519 (1972)	22
Harlow v. Fitzgerald, 457 U.S. 800 (1982)	27

Contents

	Page
Hartford Fire Insurance Co. v. California, 509 U.S. 764 (1993)	22
Hishon v. King & Spalding, 467 U.S. 69 (1984)	23
Holy Trinity Church v. United States, 143 U.S. 457 (1892).	29
Houston v. Hill, 482 U.S. 451 (1987)	30
Hughes v. Rowe, 449 U.S. 5 (1980)	22
Jenkins v. McKeithen, 395 U.S. 411 (1969)	22
Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, et al., 507 U.S. 163 (1993)	i,23
Maine v. Thiboutout, 448 U.S. 1 (1980)	23-24
McDonald v. Smith, 472 U.S. 479 (1985)	27
McLain v. Real Estate Board of New Orleans, Inc., 444 U.S. 232 (1980)	22
Mitchell v. Forsyth, 472 U.S. 511 (1984)	27
Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978)	23
Monroe v. Pape, 365 U.S. 167 (1961)	25
Morissette v. U.S., 342 U.S. 246 (1952)	30
Neitze v. Williams, 490 U.S. 319 (1989)	22
Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981)	26

Contents

page

Oklahoma City v. Tuttle, 471 U.S. 808 (1985)..... 25,26

Olmstead v. United States, 277 U.S. 438 (1928) 19

Owen v. Independence, 445 U.S. 622 (1980)..... 26

Parratt v. Taylor, 451 U.S. 527 (1981)..... 24,25

Paul v. Davis, 424 U.S. 693 (1976)..... 24

Pembaur v. Cincinnati, 475 U.S. 469 (1986)..... 26

Procunier v. Navarette, 434 U.S. 555 (1978)..... 28

Scheuer v. Rhodes, 416 U.S. 232 (1974)..... 22,23,25

Screws v. United States, 325 U.S. 91 (1945)..... 27,30

Siegert v. Gilley, 500 U.S. 226 (1991)..... 27

Smith v. California, 361 U.S. 147 (1960)..... 30

Smith v. Goguen, 415 U.S. 566 (1974)..... 30

Steffel v. Thompson, 415 U.S. 452 (1974)..... 23

Thomas v. Collins, 323 U.S. 516 (1945)..... 27

United Mine Workers v. Illinois Bar Assn.,
389 U.S. 217 (1967)..... 28

United States v. Gaudin, 515 U.S. ---,
132 L.Ed.2d 444 (1995)..... 25

United States v. Kirby, 74 U.S. 7 Wall, 482 (1868)..... 29

Contents

page

West v. Atkins, 487 U.S. 42 (1988)..... 24

Yick Wo v. Hopkins, 118 U.S. 356 (1885)..... 16

United States Constitution Cited:

Article VI, Clause 2..... 3

First Amendment..... *passim*

Fourth Amendment..... 4

Fifth Amendment..... 4,28

Seventh Amendment..... 30

Fourteenth Amendment..... *passim*

United States Statutes Cited:

28 U.S.C. § 636(b)(1)..... .. i,7,20

28 U.S.C. § 1254(1)..... 1

28 U.S.C. § 1331..... 4

28 U.S.C. § 1343..... 4

28 U.S.C. 2403(b)..... 1

42 U.S.C. § 1983..... *passim.*

42 U.S.C. § 1985(3)..... i,4

42 U.S.C. § 1988..... 4

Contents

page

Rules Cited:

Fed.R.Civ.P. 8(f)..... 22

Fed.R.Civ.P. 9(b)..... 23

Fed.R.Civ.P. 12(b)(6)..... 22

Fed.R.Civ.P. 38(a)..... 30

Florida Constitution Cited:

Article VIII, § 2(b)..... 5,26,28

Florida State Statutes Cited:

§ 99.097..... 29

§ 104.185..... *passim*

§ 166.021..... 5,26,28

§ 166.042..... 28

§ 316.002 & § 316.007..... 5

§ 847.013(4) & § 847.09..... 5

Village of North Palm Beach Code:

Charter Article III, § 10..... *passim*

APPENDIX..... See separate booklet

I, Petitioner, Immanuel Grinn, respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

28 U.S.C. § 2403(b) may apply. The initial document filed in the Supreme Court has been served on the Attorney General of Florida.

OPINIONS BELOW

The opinion of the United State Court of Appeals for the Eleventh Circuit (Court of Appeals) [App.(A)], Case No. 97-5044, decided January 29, 1998, is not published. The opinion of United States District Court, Southern District of Florida, Northern Division (West Palm Beach) (District Court) in Immanuel Grinn v. Village of North Palm Beach, *et al.*, Case No. 97-9122-CIV-RYSKAMP, decided May 6, 1997 [App.(C)] adopting the Magistrate Judge's Report and Recommendation (Magistrate Report) is not published. The Magistrate Report filed April 23, 1997 is not published [App.(D)].

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on January 29, 1998. The Court of Appeals Denied a timely petition for rehearing on April 15, 1998 [App.(B)].

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

United States Constitution Article VI, Clause 2	App.(E-1)
United States Constitution First Amendment	App.(E-1)
United States Constitution Fourth Amendment	App.(E-1)
United States Constitution Fifth Amendment	App.(E-1)
United States Constitution Seventh Amendment	App.(E-2)
United States Constitution Fourteenth Amendment	App.(E-2)

28 U.S.C.A. § 636(b)(1)	App.(F-1)
28 U.S.C.A. § 1331	App.(F-2)
28 U.S.C.A. § 1343	App.(F-2)
42 U.S.C.A. § 1983	App.(F-3)
42 U.S.C.A. § 1985(3)	App.(F-3)
42 U.S.C.A. § 1988	App.(F-4)

Fed.R.Civ.P. 8(f) "All pleadings shall be so construed as to do substantial justice."
Fed.R.Civ.P. 9(b) "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred in general."

Fed.R.Civ.P. 12(b)(6)	App.(G-1)
Fed.R.Civ.P. 15(a)	App.(G-1)

Florida Constitution Article VIII §2.(b)	App.(H-1)
Florida State Statute § 97.011	App.(H-1)
Florida State Statute § 97.021	App.(H-1)
Florida State Statute § 104.185 (yr 1985)	App.(H-2)
Florida State Statute § 104.185 (yr 1987)	App.(H-2)
Florida State Statute § 166.021	App.(H-3)
Florida State Statute § 316.002	App.(H-4)
Florida State Statute § 316.007	App.(H-4)
Florida State Statute § 847.013(4)	App.(H-5)
Florida State Statute § 847.09	App.(H-6)

North Palm Beach Code, Charter Article III, §10	App.(I-1)

STATEMENT OF THE CASE

The Constitution of the United States constructs, under the rule of law, the proper interrelationship between the individual and government. Certain human rights are declared inviolate. In a Complaint [App.(J)], I alleged that municipal government officers individually and in conspiracy under color of state law maliciously deprived me (generally) of those clearly established rights,

privileges, and immunities, and (specifically) of the First Amendment right to peacefully petition the government for redress of a grievance. Despite precedent of accepting an initial submission of a petition for referendum with less than required number of signatures for ballot access, the designated municipal officer refused to accept it. The municipality maliciously instituted a criminal complaint against me for violating a State Statute which criminalizes signing one's own name more than once to a petition. Ultimately the criminal charges were dismissed with prejudice and I filed a civil Complaint.

The Magistrate Judge granted immunity to the municipal officers and recommended [App.(D)] that the District Court dismiss my *pro se* Complaint (absent affidavits, absent discovery, absent depositions, absent a trial, absent a hearing, absent a notice of opportunity to amend; thus denying due process) -- for failure to state a claim upon which relief can be granted. The District Court Judge adopted [App.(C)] the Magistrate Judge's recommendation four days after I filed my Objections and dismissed with prejudice the Complaint. The Court of Appeals ratified the District Court's judgment [(App.(A) and App.(B)].

Throughout this Petition, where braces {} appear, they are indices of my intrusions in cited quotations. Where bold type appears, **my** emphasis is to be inferred.

UNITED STATES CONSTITUTION

The United States Constitution First Amendment states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The United States Constitution Fourteenth Amendment states in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States ...." The United States Constitution Article VI, Clause 2 states in part: "This Constitution and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land...."

A First Amendment right may be reasonably regulated by government circumspectly and carefully. Once those reasonable regulations are in place, they should be scrupulously observed by the government, ambiguities being resolved in the people's favor.

PROCEEDINGS IN COURTS BELOW

On February 27, 1997 I filed my Complaint [App.(J)], demanding a jury trial with the District Court. Jurisdiction was pursuant to 28 U.S.C.§§1331 and 1343 [App.(F)] arising under First, Fourth, Fifth and Fourteenth Amendments [App.(E)]. I stated a claim through 42 U.S.C. §§1983, 1985(3), 1988 [App.(F)]. It was docketed as No.97-8122-CIV-RYSKAMP. It included four exhibits [App.(I), App.(R), the Criminal Court's Order of Dismissal, and 14 pages of official documents in support of my contention that it was not the intent of the legislature when it enacted State Statute 104.185 to have it apply to municipalities].

In the Complaint I specifically alleged: (1) ¶¶7 through 14, that the individual defendants were policymakers acting under color of law; (2) ¶¶16 through 19, 21, 33, 37, 38, 39, 60, 61, 65 through 70, 74, 75 that in their actions, singly and/or in conspiracy, in retaliation for my exercise of Constitutional rights: (a) they denied me my right to petition; (b) they filed criminal charges against me with no probable cause; (c) they interfered in the the trial (where ultimately charges were dismissed with prejudice); and (d) that those actions were illustrative of a decade long pattern; (3) ¶¶25, 27, 29, 30, 31, the facts of events that transpired on August 16, 1997; (4) ¶¶23,28,51,53 that refusing my petition for redress of grievance was contrary to precedent and language of the Charter; thus unconstitutionally applied to me. I included a copy of the Charter as an exhibit and excerpted pertinent portions in ¶¶50 and 52; (5) ¶32 I sent notice to Council and included a copy as an exhibit; and (6) ¶¶41 through 46, that

State Statute §104.185 was unconstitutional on its face and as applied.

On March 3, 1997 Judge Kenneth L. Ryskamp issued an Order referring the Case (Pre-Trial) to Magistrate Judge Ann E. Vitunac. On March 12, 1997 I submitted a Motion to liberally construe my pleadings because I was a *pro se* plaintiff [App.(T)]. The Motion was granted by the magistrate on March 20, 1997.

On March 20, 1997, I submitted four Memoranda of Law, Points and Authorities in support of my Count I Motion for declaratory and injunctive relief on State Statute §104.185:

(A) "Right to Petition is Part and Parcel of the First Amendment" and (B) "Pre-eminence of the First Amendment" with one exhibit;

(C) "Compelling State Interest" and "Least Restrictive Means";

(D) "Overbreadth" in that §104.185 applied to any and all petitions; and

(E) "Vagueness" with two exhibits including assertion that the word "petition" was not defined.

On March 31, 1997, the Defendants filed a Motion to dismiss the case. On April 8, 1997, I filed a Response with exhibits attached [App.(M), (N), (O). and (P)] to deny the Defendants' Motion to dismiss. I attached two Memoranda of Law, Points, and Authorities:

(F) "Legislative Intent and Statutory Construction" of §104.185 and

(G) Inapplicability of §104.185 [App.(H)] to me referencing Article VIII, §2(b) [App.(H)] of the Florida Constitution, enabling language of State Statute §166.021 and its "Expressly" language with examples of State Statutes §§316.002, 316.007, 847.013(4) and 847.09 [App.(H)]; and the Municipal Petition Process with detail of Charter Article III §10 [App.(I)] and addressing events leading up to and including August 16, 1995.

On April 11, 1997, the Defense moved to strike the four Memoranda I submitted March 20, 1997. I responded on April 21, 1997.

On April 11, 1997, the Florida Attorney General filed a Motion to dismiss with prejudice Counts I and II of the

Complaint. On April 16, 1997, I filed Motions to (a) quash and deny the April 11, 1997 Attorney General Motion and (b) to bifurcate Count I from Counts II, III, IV, with non-jury trial for Count I. On April 18, 1997, **I filed a motion for hearing** and declaratory judgment on Count I.

The Magistrate Report was issued On April 23, 1997 [App.(D)] in which she acknowledged that I "had responded in substance" in my April 8, 1997 Response [which included as exhibits documents now submitted in App.(M), (N), (O) and (P)]. The Magistrate (1) did not agree that §104.185 was vague, overbroad, or violated " First Amendment rights ... by criminalizing ... a First Amendment peaceful activity' "; (2) stated that I did not "provide the Court with any examples of this alleged 'past practice' {referred to in DE 1 at ¶53} of accepting signature sheets containing multiple signatures from the same individual." (3) found that it was not "unconstitutional to apply the Charter's provision requiring a minimum number or valid signatures against" me on the initial submission; (4) did not believe that I met the burden of having to "present non-conclusory allegations which set forth specific evidence" to deprive the Defendants of immunity; (5) opined that I did not "make the requisite showing of a persistent and widespread practice that is violative of his or other's civil rights" and (6) recommended that the claim should "be dismissed for failure to state a claim upon which relief may be granted and all pending motions be denied as moot."

I refer to (2) above. First, I still insist that the referenced "past practice" was the acceptance of signature sheets with less than required signatures needed to force ballot access. Those documents were submitted with my April 8, 1997 Response. It is clear from the placement of ¶53 and ¶28 what the antecedents are. Secondly, since there was only one previous occasion for petitions to referendum before -- the petitions in 1991 -- any reference by me to precedent or past practice is, therefore, specific and clear to the **Defendants** ["and gave respondents fair notice of its basis" (*Conley v. Gibson*, 355 U.S. 41, 48 (1957)].

According to 28 U.S.C.A § 636(b)(1) [App.(F)]:
A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion {...} to dismiss for failure to state a claim upon which relief can be granted{....}
(B) a judge may also designate a magistrate **to conduct hearings,** including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A){....}

But I never had any hearings.

On May 2, 1997 I filed my Objection to the Magistrate Report. As per 28 U.S.C.A § 636(b)(1) ("The judge may also receive further evidence"), I submitted ten exhibits, [among them App.(I), (M), (N), (O), (R), (S)], seven of which duplicated earlier submittals. I wrote on page 10:

> Plaintiff would show a documented history on the part of Village legislative and executive branch in violating Plaintiff's First Amendment rights, including an attempt by the Village in 1987 to intimidate the plaintiff to stop his distribution of political handbills, the 1989 defacing of his political campaign signs and subsequent amicable settlement that the Village rewrite its code allowing political signs in private homeowners' yards, the Council passage in 1991 of a motion aimed at the Plaintiff (a Councilman at the time) not to record motions in the minutes that die for a lack of second, recent overt Council insensitivity to the plaintiff's religion, etc., etc."

On May 6, 1997, the Judge issued the Order [App.(C)] adopting the Magistrate Report, dismissing the case with prejudice, and denying all pending motions as moot.

On June 3, 1997, I filed my Notice of Appeal to the Circuit Court. On September 2, 1997, I filed my Appeal brief (No.97-5044) with the Circuit Court. My desire for **oral**

argument to "present {my} argument in a manner more in conformance with {my} lack of legal skills" was **denied** even though "{my} only experience {...} ha{d} been 'on-the-job' " {and} "{i}t seem{ed} to {me} that {I} did not clearly articulate {my} points to the Court below." I argued Count II, III, and IV as to: (1) Right to Jury Trial, (2) Municipal Liability, (3) Personal and Official Capacity, (4) Qualified Immunity, (5) Conspiracy. I argued Count I as to the unconstitutionality of State Statute 104.185: (1) Pre-eminence of the First Amendment, (2) Overbreadth, (3) Vagueness, (4) Compelling State Interest & Least Restrictive Means, (5) Prior Restraint, (6) Third Party Standing and (7) Legislative Intent. I included as Exhibits: Florida laws [App.(H)] and North Palm Beach Code, Charter Article III § 10. [App.(I)].

The Defendants filed their Brief of Appellees on September 17, 1997. I filed my Appellant Reply Brief on October 1, 1997. The Attorney General filed an Appellee Brief on October 2, 1997. I filed my Appellant Reply Brief to the Appellee Brief of the Attorney General on October 14, 1997. I filed my amended Appellate Brief on December 17, 1997. On January 29, 1998, the Circuit Court denied my Appeal [App.(A)].

On February 17, 1998 I submitted a petition for rehearing with the Circuit Court. I included 12 Exhibits including App.(I), (M), (N), (O), (P), (Q), (R), (S). On April 15, 1998, the Circuit Court denied the Petition for Rehearing [App.(B)].

HISTORY

Just Three of More Examples of Village Intrusions on my Constitutional rights

I was a candidate in the March 10, 1987 election to Council. I received a Notice of Code Violation dated March 3, 1987 indicating that the "Location of the Violation" was "Village of North Palm Beach", that the "Nature of the Violation" was "handbill distribution" and that the "Corrective Action Required" was "Stop all handbill activity immediately". The handbills were supportive of my candidacy for Council in the upcoming election. The Director of Public Services, responsible for code enforcement

was Charles R. O'Meilia.

On March 9, 1989, I notified the Village of my intention to put up political signs on private property in support of my candidacy in the upcoming March 14, 1989 election [App.(K)]. In a letter dated the following day, Mr. O'Meilia responded [App.(L)]. On March 11 and March 12, 1989 (Saturday and Sunday), employees of the Village affixed pink notices on the sign faces, obscuring the message, but making it evident that the Village was noting a code violation. The pink notices were the first and only time such a device was ever used. Saturday and Sunday are not normal working days for the Public Services Department. Coincident with the pink notices on the sign faces, "Notice of Code Violation" were sent to Village residents who had my political signs in their yards. The notice stated that the "Nature of the Violation" was "Off Premise Sign/Section 6-119(b)(9)" and that "Corrective Action Required" was "Remove sign ...within ten (10) days ...." The signs were put up on March 9, 1989, the election was March 14, 1989. Obviously, the signs would have been down within the ten days without the code violation notices. Results of the two person candidacy election: Virginius A. Marks -- 1044, Grinn -- 928.

A law suit was instigated by me against the Village and Mr. O'Meilia in District Court (CaseNo:89-8182-CIV-ROETTGER) which ultimate resolution on July 1, 1989 was a settlement. The Village agreed to "amend its current Village ordinance relative to the posting of signs and shall adopt a new ordinance ..." which would allow "[n]ot more than three temporary political signs, each said sign not exceeding five (5) square feet in background area ..."

On February 27, 1996, I went to a Council meeting to state my dismay that after two incidents a month apart of anti-Jewish and Anti-African-American literature being distributed within the Village limits, and after the Village Manager and Village Public Safety Director alerted the Council in writing, Council had not publicly condemned the incidents. I told the Council that I had always been clear that I was of the Jewish faith, and that I was deeply offended when at a previous Council meeting,

Councilwoman Vastola had stated that I did not believe in God. Ms. Vastola responded, "The reason I said that is when we have Invocation, I never see you stand. If you don't stand for Invocation, I don't care who or what your faith is. To me that is an insult to God." I then explained to her that in my faith unless there are ten co-religionists present, one does not pray in public. Her response was: "I could care less what your faith is. I truly don't care what your faith is. I truly don't. I don't, I don't care."

Precedent in filing petitions to referendum

In 1991, the Council passed a few ordinances which would allow the development of certain areas within the Village. I felt that the projects were not in conformance with the Comprehensive Plan or the Planned Unit Development ordinances. I went to Village Clerk Kathleen Kelly to find out detailed specifics as to what form the petition for referendum on the ordinances would have to be presented, to put the question to the ballot. The Village Clerk refused to elaborate except to say that the requirements were in the Charter [App.(I)].

To find out what was necessary, I signed my own name to a signature form which was described as a "Petition for Referendum on Ordinance 31-91 [App.(M)] (first submitted to the District Court on April 8, 1997 in reply to Defendant's Motion to Dismiss).

On October 4, 1991, The Village Clerk accepted the petition with only one signature. She sent a memorandum [App.(O)] (first submitted to the District Court on April 8, 1997 in reply to Defendant's motion to Dismiss) to Village Attorney George Baldwin, in which communication appears:

> Attached is copy of petition that has been resubmitted today by Councilman Grinn. According to our Charter, I must certify insufficiency within five days after it is filed, or state insufficiencies that may apply.

On October 8, the Village Attorney replied by facsimile [App.(P)] (first submitted to the District Court on April 8, 1997 in

reply to Defendant's motion to Dismiss) in which he states:

> One of the questions you asked me to address is to whether or not you are required to complete a Certificate as to its sufficiency within five (5) days from the date the Petition was filed or by October 9, 1991. {...} The subject Petition **with one signature** could be only one of many {...}. It is my opinion that the Charter **requires** the Village Clerk to complete a Certificate as to Sufficiency upon completion of the filing for Referendum Petitions and not on a piecemeal basis.
>
> Therefore, it would be my opinion that the Village Clerk would only **complete a Certificate as to Sufficiency (or insufficiency) upon expiration of the thirty (30) day period** called for in Article III, Section 10 (c) (4) {....}
>
> If {...} the Petition has been circulated and completed as **filed** with you on October 4, 1991 **{with only one signature}**, then I find that the {[Petition]} is legally insufficient under the Charter of the Village of North Palm Beach as follows:
>
> 1. The number of signatures is not equal in number to at least 15% of the total number of qualified voters registered to vote at the last Regular Village Election. {...}

On October 30, 1991 Village Clerk Kathleen Kelly sent a Certificate of Insufficiency to petition # 29-91 by registered mail to each member of the Petitioners' Committee. The petition was certified insufficient for lack of valid signatures. "1,240.65" signatures were needed, but despite the fact that the County Supervisor of Elections, out of 1429 signatures, certified that 1256 were valid, the Clerk, Kathleen K. Kelly, was disqualifying an additional 48 signatures because although the signature sheets actually had more (51) signatures, the affidavits attached stated there were 48. There was no mention in that letter of the right to amend. The Petitioners' Committee filed a timely Notice of Intention to Amend, collected additional signatures, and the Clerk issued a Certificate Of Sufficiency on Nov. 12, 1991.

"Adult Entertainment"

Back on September 6, 1991, Village Manager Dennis Kelly sent a three page memorandum to Village Attorney George Baldwin. On the second page the following is stated:

> However, one of the problems encountered in our discussions among staff in the exercise of that authority, is the equal protection clause of the Constitution. If the Council revokes the occupational license to Patty's Place, to what extent is the Council compelled to revoke the occupational license of the various video stores that also have a similar back room for the sale of pornographic material? Can we in fact shut one business down without shutting the others down? Or, can we shut all the businesses down that trade in this particular merchandise? To the best of our knowledge and belief, there is one video store on Northlake Boulevard which has a back room.

Northlake Boulevard is the main East-West thoroughfare in the five square mile Village. On August 4, 1994, the Village received the first application for a Village Occupational License from an entity which ultimately established itself on Northlake Boulevard as "Adult Video Warehouse." A second Application was made on September 22, 1994. The Occupational License was granted. In response to citizen outrage, the Village officials responded that they had no alternative -- due to First Amendment protections governing issues of free expression.

On June 8, 1995, the Village hired non-lawyer Mr. La Rue's consultant firm to draft an Adult Entertainment Ordinance. In my "The North Palm Beach REALITY," seventh issue, I allude to Mr. La Rue as the Village Manager's "friend," and the "copycat" ordinance he will draft. The one-year 21 issues REALITY [e.g., tenth issue, (App.[Q])] was highly critical of the Village government. On July 17, 1995, "copycat" Ordinance # 22-95 was enacted to establish an Adult Entertainment District on Northlake Blvd. A referendum on the ordinance would effectively establish a definable community standard of obscenity. Four consecutive related but distinct events ensued.

THE FOUR EVENTS
FIRST

On the morning of August 16, 1995, there was an infraction by the Village of the First Amendment right of petition. I complied with all the regulations of the Village Charter ordinance [App.(I)]. It is the Village that failed to comply with the procedures the Village instituted to regulate a First Amendment right. What transpired is reflected in my August 24, 1995 letter (GL) [App.(R)] to the Village Clerk, copied to Council, D. Kelly, and G. Baldwin (first submitted as an exhibit with my Complaint filed February 27, 1997) and the Clerk's notarized August 21, 1995 Witness Statement (WS) [App.(S)] (first submitted as an exhibit with my May 2, 1997 Response to the Magistrate Report).

On August 16, 1995, some time between 9:45 a.m. and 10:30 a.m., I entered the Village Clerk's Office with signed signature sheets for filing as a petition for referendum of Ordinance # 22-95. Village Clerk Kathleen Kelly refused to accept the signature sheets ["I therefore did not accept these papers" (WS)], basing her decision on the fact that there clearly were not enough signatures to fulfill the element necessary to have the mandatory referral of the ordinance to the electorate. There ensued a heated discussion between Ms. Kelly and me as to the interpretation of the Charter, as far as the provision for the "second bite at the apple" which allows for an application for amendment by notice for intention to amend. I asked her to confirm her decision and reason supporting her decision in writing. She refused. I quote from (WS):

> **It was apparent to me** that Mr. Grinn knew that he had only collected 400+ signatures, but wanted to submit it anyway and have me continue the process and ultimately declare the petition "insufficient", thereby giving him the right to "amend" and gain 10 to 17 days additional days in which to get the required number.
> However, as I interpret the Charter of the Village, the initial filing of a petition is predicated on 15% of the voters of the Village having signed it, and filling it in proper form, the key words being "proper form". I showed

Mr. Grinn the rules in the Charter. He argued that I should accept the document and declare it "insufficient". My interpretation of the procedure is that "sufficiency" or "insufficiency" is declared based on verification of valid signatures, the key word being "valid".

I excerpt the pertinent portions of the Charter [App.(I)], my emphasis in bold type and/or bold and underlined.

(c)(1) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of voters of the village equal in number to at least fifteen (15%) of the total number of qualified voters registered to vote at the last regular village election.

(c)(2) ***Form and content.*** All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filings. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

{...}

(d)(1) *Certificate of clerk; amendment.* Within twenty (20) days after the initiative petition is filed and five (5) days for a referendum petition; the village clerk or other official designated by the council **shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail**. Grounds for insufficiency are only those specified in subsection (c). **A petition certified insufficient for lack of the required number of valid signatures may be amended once** if the petitioners' committee files a notice of intention to amend it {....}

(d)(2) *Council review.* **If a petition has been certified insufficient** and the petitioners' committee does

not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, **file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition**.

Parts of Charter Article III, Section 10(d)(1) and 10(d)(2) were excerpted in the original Complaint ¶¶ 50, 52.

In the first paragraph (WS) the Village Clerk states, "Mr. Grinn is experienced in the petition process, having successfully led a petition drive to Referendum in 1992 {*sic*}." The experience I gained was from the 1991 petition drive described above, wherein (a) the Village Clerk accepted a petition for referendum with only one signature [App.(M)] and (b) the correspondence [App.(O),(P)] between the Village Clerk and the Village Attorney (the very same individuals holding those posts in 1991 and 1995). Under color of law the Village violated the 14th Amendment command "No State shall ... deny to any person ... the equal protection of the laws." The same Village official accepted a one signature petition for referendum on 4 October 1991, but refused to accept a petition for referendum with over 500 signatures on 16 August 1995.

I submitted a petition. By Charter Art.III,§10(c)(1) *supra*, it was not a **mandatory** referendum petition. It did not have enough signatories. But ... the Charter gives the petitioners' committee thirty days for an **initial** submission. If there is an insufficiency in the number of valid signatures submitted, the mathematics indicate an additional two week "gain" period to canvass for supplementary signatures. If thirty days equate to 1300 signatures, 2 weeks equate to 650 signatures. The Charter, therefore, contemplates a not insignificant amount of signatures to be lacking in the **initial** submission.

The " 'proper form' " the Village Clerk refers to in her Witness Statement as a reason not to accept the submitted signature sheets

is defined in Charter Article III, Section 10(c)(2) quoted above. The signature sheets submitted met all those requirements.

There is nothing in the regulatory language of the Charter that permits the Village to refuse for filing petitions based on a lack of valid signatures. In fact the language plainly allows for amendment **after** receipt of a certificate of insufficiency by extension of time period to amass the necessary amount of signatures if an initial attempt lacks requisite signatures. The requirement for a minimum certain amount of valid signatures is to mandate ballot access. The Charter makes clear that submitting less for filing and consequent certificate of insufficiency is also acceptable for two reasons: (1) to amend to seek additional signatures and/or (2) to submit the petition to Council as a precatory petition which would at least force the Council to discuss the petition at a public meeting (where citizens have the right of input). When, in the morning, the Village Clerk refused to accept and file the signature sheets, she deprived me (as a member of the petitioners' committee and a signatory of a signature sheet) and the class of over 500 other signatories of a supplicatory petition for redress, provided for in Charter Article III, Section 10(d)(2).

Manifestly, it is not **filing** that is being regulated by the Charter 15% requirement, but rather **mandatory ballot access**. Elementary, fundamental logic argues that petitions be (minimally) accepted by the government for consonance within the meaning of the First Amendment. By not accepting the petition, the Village Clerk, also, exercised unconstitutional prior restraint.

The Village Clerk did not accept a petition which conformed to the letter and spirit of the Village Charter regulations of petition to redress a grievance. She knew immediately my intent when she stated that "you cannot buy the ten days" (GL). The Village Clerk is a person acting under color of state law. She is the policymaking administrative official designated by the council and named by her title in the Charter as the official administering the petition-to-referendum process. She knew or should have known that she was acting in an unconstitutional way because of the language of the Charter itself and the correspondence she herself engaged in with the Village Attorney in October 1991. She acted with "evil eye and unequal hand" [*Yick Wo v. Hopkins*, 118

U.S. 356, 373-374 (1885)].

SECOND

I had assured many Village residents that I knew the rules and regulations governing the petition process to refer an ordinance to the vote of the electors. I bruited about that if the initial submission was insufficient, a certificate of insufficiency would be issued and an additional number of days would be afforded to gather additional signatures. I had, after all, gone through the petition experience in 1991.

As I stated in (GL), the Village Clerk "stated that the extension of time to collect more signatures could be granted only if at least a total of 1300 signatures were submitted, but that subsequent to that submittal less than 1300 would be determined to be valid signatures."

On the same day, after an interim visit, some time between 4:50 p.m. and 4:55 p.m., I returned. I Quote from GL:

> I submitted signature forms with a total number of signatures in excess of 1300. Once again you refused to accept the signature forms as petitions, this time on the grounds that many of the signatures (approximately 800) were all of one Immanuel Grinn. You telephoned the Village Attorney in my presence and it seemed he supported your position. Your refusal was witnessed by Ms. Teal. Another person present was Ms. Lucia Traugott. You denied my request to write me the reason(s) you refused to accept the signature forms as petitions. You wanted me to take back the signature forms. I refused since the signature forms were a matter of public record. I left the Clerk's office with you standing, holding the signature forms in your hands.

(WS) essentially tracks my letter with additions. "Since this document did not constitute a proper petition, I did not " 'take' " his document, she "was not accepting his papers". Then, "... State Statute expressly forbids a person to sign a petition more than once ..." and "I also asked him if he was aware that knowingly signing a petition was against the law. He said 'show me". I did not

show him the statute at this time."

Again the Village Clerk refused to accept the petition. Again the Village Clerk demonstrated prior restraint on a First Amendment right. This time with the "show" of support of the Village Attorney. There were no fictitious names. There were no forgeries. There was no fraud. There was no intent to deceive. All statements on all the documents were accurate (The documents exactly replicate the language of the 1991 petition [App.(M) (N)] with the exception of the substitution of dates and of 22-95 wherever 31-91 appear). The deadline for initial submission was 5:00 p.m. The Clerk did not accept the petition by 5:00 p.m. I left the signature sheets after 5:00 p.m. in the hands of the Village Clerk, no proximate threat to anybody or anything, after 5:00 p.m.

THIRD

The Village's non-acceptance of the signature sheets on the morning of August 16, 1995 was the unconstitutional stimulus which provoked the response of multiple "Immanuel Grinn" signatures. **The signature sheets were not filed, were not declared "insufficient". Since the signature sheets were not accepted for filing by deadline, the petition was not a mandatory petition for ballot access.**

According to her (WS), the Village Clerk then, in her office, related the transpired events to Village Manager Kelly and Councilman Valente. She called the Village Attorney. Then she went home and called the other four council people, successfully reaching two of them and presumably informing the other two in the following day(s). On August 21, 1995, "Mr. O'Meilia came into the office after lunch to get" certified copies of four signatures sheets and accompanying affidavits.

Mr. O'Meilia then went to the North Palm Beach Public Safety Department (in the same building as the Village Clerk's office) with the certified documents and made a complaint that I violated State Statute 104.185 [App.(H)] (first submitted as an exhibit with my Complaint filed February 27, 1997). This complaint named the Village as the "victim."

Here a logical dilemma evidences. Elsewhere (in my April 8, 1997 reply to Defendants' Motion to Dismiss, page 7, ¶21) I refer

to "The irony: on the one hand the Village refused to accept the signature sheets as a petition; on the other hand the Village used those very same signature sheets as a petition to claim victim status on charges initiated by Defendants against Plaintiff." With those "unclean hands" [*Olmstead v. United States*, 277 U.S. 438, 483-484 (1928), Brandeis, J., dissenting] the Village instituted a criminal action against me. This was done maliciously and without probable cause.

FOURTH

On or about September 19, 1995 I received a Summons to appear on case No. 9501968MM A08 to answer an information charging me with criminal violation of of the laws of the State of Florida. I pled not guilty.

Individual policymakers intervened in the criminal case in an effort to prevent the charge from being withdrawn while it was pending before Judge Cory Ciklin in the Circuit Court of the Fifteenth Judicial District in Palm Beach County, Florida.

On June 6, 1996 in reply to Judge Ciklin's inquiry as to what was holding up the settlement of the case, Assistant State Attorney Timothy Beckwith replied:

> The State at least has to have input from other sources, primarily individuals who this affected and I think that's where we {encounter} resistance to some sort of a .. be it community service for *nol pros* or something along those lines.

After further prodding by Judge Ciklin, the Assistant State Attorney said, "The State ran that proposal by individuals who are affected by this and they were reluctant to accept a *nol pros*...."

On June 13, 1996, Judge Ciklin addressed me:

> All I can offer you for you, Mr. Grinn, is: you plead "no contest" and I do "withhold adjudication," court costs 105 bucks, end it today. I mean, that's all I can do in a case like this. But, again, you know I'm very sensitive to the fact when I hear a quote unquote victim, you know, I'm inclined not to do that because there may be something more than meets the eye here as we talked about last time. If it's political, if it's of a political nature, if it has to do

> with someone, perhaps the Village alleges is a gadfly (and I say that respectfully), you know, maybe that's what's going on here.

On July 1, 1996, Mr. Beckwith told Judge Ciklin, "Well, Your Honor, the only thing: I do think if I enter into this, that I should let people know about what I'm going to do and let them, if they want to address the Court, they can do it." After a small diversion Judge Ciklin turned to Mr. Beckwith: "Okay. Do you need to call somebody? I mean would you feel better doing that? By calling somebody now and talking to them about this?" Mr. Beckwith answered, "Well, I do think I should let the Village know what ..." Miffed, I interjected, "Let them know afterward. Let them know afterward." Mr. Beckwith did not agree. Judge Ciklin then told him to make a call to his superior and "we do the plea now." Mr. Beckwith's response:

> I mean, ultimately it is my decision, but at the same time, I would like to talk to him. I would like to put it in writing, I would like to put the Village on notice what I'm going to do and I'm not going to be deterred from whatever decision I make, because I've had their input and I've told Mr. Grinn their input is done.

An hour and a half later, Mr. Beckwith had not returned, Judge Ciklin made an order approving my Subpoena Duces Tecum for scores of documents from the Village.

On August 30, 1996, without admitting any guilt and there being no **intimation** of guilt as to the charge alleged, I entered a plea of no contest. On October 22, 1996, my motion to dismiss was granted and the complaint was dismissed with prejudice.

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEAL HAS SANCTIONED SUCH DEPARTURES FROM ITS OWN PREVIOUS DECISION AND 28 U.S.C. § 636(b)(1) BY THE DISTRICT COURT IN DISMISSING A *PRO SE* § 1983 COMPLAINT, AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION.

> Where it appears a more carefully drafted complaint might state a claim upon which relief can be granted, we have held that a district court should give a plaintiff an opportunity to amend his complaint instead of dismissing it. {...} This is still true where the plaintiff does not seek leave until after the district renders final judgment{...}, and even where the plaintiff never seeks leave to amend in district court, but instead appeals the district court's dismissal {...} (complaint dismissed with prejudice and plaintiff appealed; court of appeals stated that "if the complaint does not adequately apprise the defendant of the nature of the plaintiff's claim, the court should allow the plaintiff to amend the pleadings to more plainly delineate the cause of action rather than dismiss the complaint.").
>
> **If our precedent leaves any doubt regarding the rule to be applied in this circuit, we now dispel that doubt by restating the rule. Where a more carefully drafted complaint might state a claim. a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.**[6]
>
> [6] We note that the rule that a plaintiff be given at least one chance to amend his complaint before the district court dismisses it with prejudice is consistent with the Federal Rules' fundamental goal that disputes be resolved on the merits, rather than on the pleadings. Under the Federal Rules, "the purpose of pleading is to facilitate a proper decision on the merits." *Conley*, 55 U.S. at 48, 78 S.Ct. at 103. Dismissing an action without granting even one chance to amend is contrary to this goal.
>
> *Bank v. Pitt*, 928 F.2d 1108, 1111 (11th Cir. 1991).

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS HAS DECIDED THE DISMISSAL OF A *PRO SE* § 1983 COMPLAINT OF VIOLATION OF A FIRST AMENDMENT RIGHT IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THE UNITED STATES SUPREME COURT.

> Following the simple guide of rule 8(f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. *Conley v. Gibson*, 355 U.S. 41, 48 (1957).

> What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations. *Neitze v. Williams*, 490 U.S. 319, 327 (1989).

> Petitioner's complaint {...} was not prepared by counsel. It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standard than formal pleadings drafted by lawyers...." *Haines v Kerner*, 404 US 519, 520, 30 L Ed 2d 652, 92 S Ct 594 (1972), {...} And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. *Hughes v. Rowe*, 449 U.S. 5, 10 (1980).

See Estelle v. Gamble, 429 U.S. 97, 106 (1976); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Cruz v. Beto*, 405 US 319, 322 (1972) *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969); *Conley v Gibson*, 355 U.S. 41, 45-46 (1957).

> "[A] complaint should not be dismissed unless 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' *McLain v. Real Estate Board of New Orleans, Inc.*, 444 US 232, 246, 62 L Ed 2d 441, 100 S Ct 502 (1980) (quoting *Conley v Gibson*, 355 US 41, 45-46, 2 L Ed 2d 80, 78 S CT 99 (1957))." *Hartford Fire Insurance Co. v. California*, 509 U.S. 764, 811 (1993).

See Haines v. Kerner, 404 U.S. 520-521 (1972).

> We review here a decision granting a motion to dismiss, and therefore must accept as true all the factual allegations in the complaint.{...} We think that it is impossible to square the "heightened pleading standard" {...} with the liberal system of "notice pleading" set up by the Federal Rules {... which} do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, et al.*, 507 U.S. 163, 164 (1993).

See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

> When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. **The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is remote and very unlikely, but that is not the test**. *Scheuer v Rhodes*, 416 U.S. 232, 236 (1974).

> The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

> The solitary individual who suffers a deprivation of his constitutional rights is no less deserving of redress than one who suffers together with others. *Steffel v. Thompson*, 415 U.S. 452, 474 (1974).

> *Monell v. New York City Dept. of Social Services*, 436 US 658, 700-701, 56 L Ed 2d 611, 98 S Ct 2018 (1978), as support for its conclusion that municipalities are "persons"

> under § 1983, reasoned that "there can be no doubt that § 1 of the Civil Rights Act [of 1871] was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Maine v. Thiboutout*, 448 US 1, 4-5 (1980).
>
> Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. *Bell v. Hood*, 327 U.S. 678, 684 (1946).

To **state a claim for relief I must allege** a constitutional infraction done under color of law. In my Complaint, I have so specifically alleged and submitted substantiating documentation. **To recover I must prove.** To prove, I deserve a trial.

> To state a claim under § 1983, a plaintiff must **allege** the violation of a right secured by the Constitution and laws of the United States, and must show that the **alleged** deprivation was committed by a person acting under color of state law. *Parratt v Taylor*, 451 US 527, 535, 68 L Ed 2d 420, 101 S Ct 1908 (1981) (overruled in part on other grounds, *Daniels v Williams*, 474 US 327, 330-331, 88 L Ed 2d 662, 106 S Ct 662 (1986); *Flagg Bros. Inc. v Brooks*, 436 US 149, 155, 56 L Ed 185, 98 S Ct 1729 (1978). *West v Atkins*, 487 U.S. 42, 48 (1988).

See Albright v. Oliver, 510 U.S. 266, 271 (1994); *Paul v. Davis*, 424 U.S. 693, 700 (1976).

> By the plain terms of § 1983, two -- and only two -- **allegations** are required in order to state a cause of action under that statute. First, the plaintiff must **allege** that some person has deprived him of a federal right. Second, he

> must **allege** that the person who has deprived him of that right acted under color of state or territorial law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).
>
> We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the **allegation** of their respective complaints, they were entitled to have them judicially resolved. *Scheuer v. Rhodes*, 416 U.S. 232, 250 (1974).

See Monroe v. Pape, 365 U.S. 167, 171 (1961).

> The plaintiff must **prove** that (1) a person (2) acting under color of state law (3) subjected the plaintiff or caused the plaintiff to be subjected (4) to the deprivation of a right secured by the Constitution or laws of the United States. *Oklahoma City v. Tuttle*, 471 U.S. 808, 829 (1985), Brennan, J. concurring.

See Parratt v. Taylor, 451 U.S. 527, 535, (1981) overruled on other grounds, *Daniel v. Williams*, 474 U.S. 327; *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150 (1970).

> As our decision in *Canton* makes clear, "deliberate indifference" is a stringent standard of fault, requiring **proof** that a municipal actor disregarded a known or obvious consequence of his action. *Bryan County Commissioners v. Brown*, 520 U.S. --,--, 137 L.Ed.2d 626, 643 (1997).
>
> This right {to jury trial} was designed "to guard against a spirit of oppression and tyranny on the part of the rulers," and "was from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties." {2 J. Story, Commentaries on the Constitution of the United States} 540-541 {(4th ed 1873)}. *United States v. Gaudin*, 515 U.S. ---, 115 S.Ct. 2310, 132 L.Ed.2d 444, 450 (1995).

> Whatever doubt may have existed should now be dispelled. The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

The Florida Constitution Article VIII, §2(b) and enabling legislation [App.(H)] make clear that the Florida is a "Home Rule State" where the State delegated all government power to municipalities except those **expressly** prohibited or preempted. Thus, the Council members, Village Manager, Village Clerk and Village Attorney function under color of state law.

> {A} municipality can be liable under § 1983 only where its policies are the "moving force [behind] the constitutional violation. " {...} As Justice Brennan's opinion in *Pembaur v Cincinnati*, 475 US 469, 483-484, 89 L Ed 2d 452, 106 S Ct 1292 (1986) (plurality) put it: "[M]unicipal liability under § 1983 attaches where -- and only where -- a deliberate choice to follow a course of action is made from among various alternatives" by city policymakers. See also *Oklahoma City v Tuttle*, 471 US, at 823, 85 L Ed 2d 791, 105 S Ct 2427 (opinion of Rehnquist, J.). *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

See Bryan County Commissioners v. Brown, 520 U.S. --,--, 137 L.Ed.2d 626, 648 (1997), Souter, J. dissenting; *Pembaur v. Cincinnati*, 475 U.S. 469, 480-481 (1986); *Newport v Fact Concerts, Inc.*; 453 US 247, 250-252, (1981); *Owen v. Independence*, 445 US 622, 625-630 (1980).

> **The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. {...}**

> It is clear that under "color" of law means under "pretense" of law. {...} Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. *Screws v. United States*, 325 U.S. 91, 106, 111 (1945).

> A necessary concomitant to the determination of whether the constitutional right asserted by the plaintiff is "clearly established" at the time a defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all. *Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

See Davis v. Scherer, 468 U.S. 183, 194 (1984). *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1984); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Butz v Economou*, 438 U.S. 478, 498 (1978).

> The First Amendment guarantees "the right of the people ... to petition the Government for a redress of grievances." The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression.{...}
> {... T}he values in the right of petition as an important aspect of self-government are beyond question. {...}
> The Petition Clause {...} was inspired by the same ideals of liberty and democracy that gave us freedoms to speak, publish and assemble. {...} These First Amendment rights are inseparable. *McDonald v. Smith*, 472 U.S. 479, 482-483, 485 (1985).

> We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable. {They are cognate rights.}" *Thomas v Collins*, 323 US 516, 530

(1945). See *De Jonge v Oregon*, 299 US 353, 364, 81 L ed 278, 283, 57 S Ct 255 (1937). *United Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967).

State Statute § 104.185 [App.(H)] was applied unconstitutionally to me, violative of the Fifth and Fourteenth Amendment clauses of due process because: (1) The application of Statute 104.185 to municipal elections is contrary to Florida Constitution Article VIII, §2(b) [App.(H)] and enabling legislation of Florida Chapter 166 ("Municipal Home Rule Powers Act") State Statutes §§ 166.021 and 166.042 [App.(H)] wherein there is no **express** language in § 104.185 stating that the legislation covers municipalities; (2) does not reflect the legislative intended desired goal of regulating only State petitions submitted at General elections; and (3) even to conservatively interpret § 104.185 to be restrictive to mandatory petitions specifically for ballot access, the Village's unconstitutional action in refusing to receive the petition for filing by the deadline converted the signature sheets to a precatory petition, incapable of doing anything more than supplicating, not mandating, ballot access.

The Constitutional right of petition infringed by the Village and its officers named was clearly established at the time of their challenged conduct. They knew or should have known of that right. They knew or should have known that their conduct violated the constitutional norm. *See Ex Parte Young,* 209 U.S. 128, 159-160 (1907). Further, the officials acted with "malicious intention" to deprive me of a constitutional right or to cause me "other intentional injury." They intended the consequences of their conduct. *See Procunier v. Navarette*, 434 U.S. 555, 562, 566 (1978).

State Statute § 104.185 [App.(H)] has been amended (as presented in the Appendix), but the pertinent portion is still aptly unconstitutional so the point has not been mooted by the amendment. The statute casts an extraordinarily broad net over all petitions. By its clear language, the statute applies to any and all petitions on issues. The Courts have acknowledged the preeminence of the First Amendment. The Courts' forbearance of

"third party standing" in First Amendment expression cases manifests the principle that even a **chill** to the peaceful expression of individual rights is ultimately more dangerous to the order of a civilized democratic society than the *robust* expression of the same. *See Brockett v. Spokane Arcades, Inc.* 472 U.S. 491, 503-504 (1985); *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *De Jonge v. Oregon*, 299 U.S. 353, 364-365 (1937).

Statute §104.185 does dissuade citizens from the free exercise of the First Amendment protective right of petition for a redress of grievance because: (1) it is overbroad, (2) it is vague, (3) it is not narrowly tailored nor narrowly targeted, (4) it regulates not a compelling state interest but only a convenience oriented state interest, (5) the exaction of a criminal penalty is excessive.

> In its opinion {*United States v. Kirby*, 74 U.S. 7 Wall, 482, 486} the court says: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the Legislature intended exceptions to its language which would avoid results of this character. **The reason of the law in such cases should prevail over its letter.**" *Holy Trinity Church v. United States*, 143 U.S. 457, 461 (1892).

By construing State Statute §104.185 *in pari materia* and to include Legislative intent derived from its written history (including staff comment), it is obvious that the language of the statute was targeted (for a convenience purpose) at petitions for ballot access for **State** candidacies or issues in a **General** Election, not a municipal election Because §104.185 was divorced from what became §99.097, without qualifying language it became overbroad and was unconstitutionally applied to me.

> In its effort to be all-inclusive, however, the provision raises serious problems of vagueness, particularly treacherous where, as here, the violation of its terms

> carries criminal penalties and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights. *Buckley v. Valeo*, 424 U.S. 1, 76-77 (1976).

See Houston v. Hill, 482 U.S. 451, 459 (1987); *Smith v. Goguen*, 415 U.S. 566, 574-576 (1974); *Smith v. California*, 361 U.S. 147, 150-151 (1960); *Morissette v. U.S.*, 342 U.S. 246, 262-263 (1952); *Screws v. United States*, 325 U.S. 91, 101 (1945).

CONCLUSION

The First Amendment protects not only the substantive right to peacefully petition the government, but also protects those who exercise that privilege, as well as the other privileges, from government retaliation in response to the exercise of those rights. The intrusion by a municipality by its officers against peaceful political protest deserves juridical censure.

Since institution of the Complaint, I have not had a hearing. I have not seen a magistrate. I have not seen a judge. I have not seen the inside of a courtroom. I have not been granted the opportunity to submit loads of evidence to a judge or jury.

I have met the threshold requirement to gain access to trial. To prove, I must go to trial. I have not been before a jury. I have not been granted that Seventh Amendment right, Fed.R.Civ.P. 38(a).

Wherefore, I respectfully request that my petition for writ of certiorari be granted.

Respectfully submitted

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425

Supreme Court, U.S.
FILED

98 49 JUL 13 1998

OFFICE OF THE CLERK

NO.

In The

Supreme Court of the United States

October Term, 1997

Immanuel Grinn,

Petitioner,

vs.

Village of North Palm Beach, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

APPENDIX

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425

112 pp

APPENDIX TABLE OF CONTENTS

Opinion of the United States Court of Appeals for the Eleventh Circuit Filed January 29, 1998.....App.(A-1)

Denial for Rehearing by United States Court of Appeals for the Eleventh Circuit Filed April 15, 1998.....App.(B-1)

Order of the United States District Court For The Southern District of Florida Filed May 6, 1997....App.(C-1)

Report and Recommendation of Magistrate Judge in United States District Court For the Southern District of Florida Submitted April 23, 1997.....App.(D-1)

United States Constitution Article VI, Clause 2.....App.(E-1)

United States Constitution First Amendment.....App.(E-1)

United States Constitution Fourth Amendment.....App.(E-1)

United States Constitution Fifth Amendment.....App.(E-1)

United States Constitution Seventh Amendment.....App.(E-2)

United States Constitution Fourteenth Amendment App.(E-2)

28 U.S.C.A. § 636(b)(1)..... App.(F-1)

28 U.S.C.A. § 1331..... App.(F-2)

28 U.S.C.A. § 1343..... App.(F-2)

42 U.S.C.A. § 1983..... App.(F-3)

42 U.S.C.A. § 1985(3)..... App.(F-3)

42 U.S.C.A. § 1988..... App.(F-4)

Fed.R.Civ.P. 12(b)(6)..... App.(G-1)

Fed.R.Civ.P. 15(a)..... App.(G-1)

Florida Constitution Article VIII §2.(b)..... App.(H-1)

Florida State Statute § 97.011..... App.(H-1)

Florida State Statute § 97.021..... App.(H-1)

Florida State Statute § 104.185 (yr 1985)..... App.(H-2)

Florida State Statute § 104.185 (yr 1987)..... App.(H-2)

Florida State Statute § 166.021..... App.(H-3)

Florida State Statute § 316.002..... App.(H-4)

Florida State Statute § 316.007..... App.(H-4)

Florida State Statute § 847.013(4)..... App.(H-5)

Florida State Statute § 847.09..... App.(H-6)

North Palm Beach Code, Charter Article III, §10..... App.(I-1)

Original Complaint: Immanuel Grinn v Village of North Palm Beach..... App.(J-1)

Letter of March 9, 1989 from me to Village..... App.(K-1)

Letter of March 10. 1989 from O'Meilia to me..... App.(L-1)

Petition for Referendum on Ordinance #31-91..... App.(M-1)

Affidavit dated Oct 4, 1991..... App.(N-1)

Memorandum of Oct 4, 1991 From Clerk Kelly to Attorney Baldwin..... App.(O-1)

Facsimile Letter of Oct 8, 1991 from Attorney Baldwin to Clerk Kelly..... App.(P-1)

"REALITY" 10th issue..... App.(Q-1)

Letter from me to Clerk Kelly of Aug 24, 1995..... App.(R-1)

Clerk Kelly Witness Statement..... App.(S-1)

My Motion to District Court to liberally construct my *pro se* Complaint..... App.(T-1)

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-5044
Non-Argument Calendar

D.C. Docket No. 97-8122-CV-KLR

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 29 1998
THOMAS K. KAHN
CLERK

Immanuel Grinn

Plaintiff-Appellant,

versus

VILLAGE OF NORTH PALM BEACH;
LAWRENCE B. KELLEY, individually,
personally, and/or in his official
capacity as Member of Village Council,
VIRGINIUS A. MARKS, individually,
personally, and/or in his official
capacity as Member of Village Council
CHARLES R. O'MEILIA, individually,
personally, and/or in his official
capacity as Member of Village Council;
SAMUEL T. VALENTE, individually,
personally, and/or in his official
capacity as Member of Village Council,
GAIL H. VASTOLA, individually,

personally, and/or in her official
capacity as Member of Village Council,
GEORGE W. BALDWIN, individually,
personally, and/or in his official
capacity as Village Attorney,
DENNIS W. KELLY, individually,
personally, and/or in his official
capacity as Village Manager,
KATHLEEN F. KELLY, individually,
personally, and/or in her official
capacity as Village Clerk,

Defendants-Appellees,

FLORIDA ATTORNEY GENERAL,
Intervening Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(January 29, 1998)

Before BLACK, BARKETT and HULL, Circuit Judges.

PER CURIAM:

Immanuel Grinn appeals the district court's Fed.R.Civ.P. 12(b)(6) dismissal of his complaint alleging civil-rights violations under 42 U.S.C. §§ 1983 and 1985(3), and dismissal of his claim that Fla. Stat. § 104.185, and N. Palm Beach, Fla. Code art. III, § 10 are unconstitutional. We conclude that Grinn failed to properly state a claim for relief, and, therefore, affirm.

On August 16, 1995, Immanuel Grinn attempted to file a petition for a referendum at the North Palm Beach village clerk's office. The clerk refused to accept the petition because it did not contain the necessary number of signatures. Grinn returned later that day with more signatures sheets containing the required

number of signatures. The clerk refused to accept them for filing because, as Grinn admits, he signed the sheet multiple times.

On August 21, 1995, defendant Councilman O'Meilia filed charges against Grinn for violation of Fla. Stat. § 104.185 which makes it unlawful for any person to knowingly sign a petition for a candidate or a particular issue more than one time. Grinn pleaded not guilty, and the charges were later dismissed.

Grinn then brought this pro se civil action against the village of North Palm Beach, several members of the village council, the village attorney, the village manager and the village clerk, in their individual and official capacities alleging that (1) Florida State Statute 104.185 is unconstitutional on its face and/or as applied, (2) N. Palm Beach Fla., Code art. III, § 10 is unconstitutional as applied, (3) the Village Clerk's refusal to accept his petition and his subsequent prosecution violated his civil rights, and (4) defendants conspired to violate his civil rights. Grinn requested damages, declaratory relief, and attorney's fees.

This Court reviews de novo the dismissal of a complaint for failure to state a claim, accepting all allegations in the complaint as true and construing facts in a light most favorable to the plaintiff. Harper v. Thomas, 988 F.2d 101, 103 (11th Cir. 1993). A complaint may not be so dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Patula Elec. Membership Corp. v. Whitworth, 951 F.2d 1238, 1240 (11th Cir.), cert. denied, 506 U.S. 907 (1992) (citations omitted). In a pro se action, a court should construe a complaint more liberally than it would pleadings drafted by lawyers. Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir. 1991).

Having considered all of these principles, and reviewed the record we find no error in the district court's dismissal of Grinn's complaint.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-5044

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APRIL 15, 1998
THOMAS K. KAHN
CLERK

IMMANUEL GRINN,

Plaintiff-Appellant

versus

VILLAGE OF NORTH PALM BEACH,
LAWRENCE B. KELLEY, individually,
personally, and/or in his official
capacity as Member of Village Council, et al.

Defendants-Appellees

On Appeal from the United States District Court for the
Southern District of Florida

BEFORE: BLACK, BARKETT and HULL, Circuit Judges

PER CURIAM

The petition(s) for rehearing filed by appellant Immanuel Grinn is denied.

ENTERED FOR THE COURT:

"s/ Rosemary Barkett"
UNITED STATES CIRCUIT JUDGE ORD-41

App.(C-1)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 97-8122-CIV-RYSKAMP

IMMANUEL GRINN,

Plaintiff.

vs. **CLOSED CASE**

VILLAGE OF NORTH PALM BEACH, *et al.*,

Defendants

_____/

FILED by D.C.

MAY 06 1997

CARLOS JUENKE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATIONS AND DISMISSING CASE.

This cause came before the Court upon Magistrate Judge Vitunac's Report and Recommendation, filed April 23, 1997. Magistrate Judge Vitunac recommends that defendants' motion to dismiss be granted. Plaintiff has filed an objection to the Report and Recommendation. Upon review of plaintiff's objections, the Court concludes that he has not shown the Report and Recommendation's analysis to be incorrect in any aspect. Accordingly, the Court agrees with Magistrate Judge Vitunac that plaintiff has not stated a claim upon which relief can be granted.

The Court has reviewed the file, and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that

1. Magistrate Judge Vitunac's Report and Recommendation be, and the same is hereby **RATIFIED, AFFIRMED** and **APPROVED** in its entirety;

2. This case is hereby **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted;

3. The Clerk of the Court shall **CLOSE** this case and **DENY** all pending motions as moot.

DONE AND ORDERED in Chambers of West Palm Beach, Florida, this 6 day of May, 1997.

"s/ KENNETH L. RYSKAMP"
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-8122-CIV-RYSKAMP
U.S. MAGISTRATE JUDGE VITUNAC

IMMANUEL GRINN,

Plaintiff.

vs.

VILLAGE OF NORTH PALM BEACH, *et al.*,

Defendants

_____/

REPORT AND RECOMMENDATION

This matter is before the court upon order of reference (DE 3) from District Court Judge Kenneth L. Ryskamp to take all necessary action and/or to issue a report and recommendation. The Defendants, Village of North Palm Beach, Kelly {*sic*}, Marks, O'Meilia, Valence {*sic*}, Vastola, Baldwin, D. Kelly and K. Kelly have moved (DE 25) to dismiss the complaint for failure to state a claim. The Attorney General, Robert A. Butterworth, after making a special appearance for the purpose of defending the constitutionality of certain state statutes and municipal ordinances which are the subject of the Plaintiff's complaint, has adopted the Defendant's motion to dismiss (DE 30). The Plaintiff has responded in substance (DE 26) {*sic*}, therefore, this matter is ripe for review.

BACKGROUND

Plaintiff, Immanuel Grinn, contends that the Village of North Palm Beach and its employees violated his right to petition the government for redress. Pursuant to a provision in the Village

Charter, Grinn appeared at the offices of the Village Clerk on August 16, 1995 with a series of signed signature sheets which he sought to file in order to obtain a referendum on a recently passed Village Ordinance.[1] The Clerk refused to accept the sheets because they did not contain the necessary number of signatures. (Complaint, DE 1 at ¶27). Grinn then left the Clerk's office but returned later that day with sheets containing the necessary number of signatures. The Clerk, however, again refused to accept them for filing because, as the Plaintiff admits, he had signed multiple times. (DE 1 at ¶29).

According to the Plaintiff, on August 21, 1995 Defendant Village Councilman O'Meilia filed charges against him for violation of Florida Statutes § 104.185 which makes it unlawful for any person to knowingly sign a petition for a candidate or a particular issue more than one time. These charges were later dismissed pursuant to a prior agreement between the parties. (*See* DE 1, Exhibit C). Thereafter, on February 27, 1997 the instant suit was filed.

DISCUSSION

Standard of Review for Motion to Dismiss

A complaint should not be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46; *Bracewell v. Nicholson Air Services., Inc.* 680 F.2d 103, 104 (11th Cir. 1982). In reviewing a motion to dismiss, the Court must view the complaint in the light most favorable to the plaintiff and accept all allegations as true. *Colodny v. Iverson, Yoakum, Papiano & Hatch*, 838 F. Supp. 572, 573 (M.D. Fla. 1993) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). Dismissal should occur only if the plaintiff can prove no set of facts upon which relief could be granted. *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994) (citing *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). Furthermore, a Court is mandated to accept all well-pleaded

allegations in the plaintiff's complaint as true. *Gonzales v. McNary*, 980 F.2d 1418, 1419 (11th Cir. 1993). Nevertheless, there is no requirement that unsupported allegations or legal conclusions masquerading as factual conclusions be accepted as true. *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993).

The *pro se* complaint at issue here contains four counts. The first alleges that State Statutes § 104.185 is unconstitutional on its face or as applied to Plaintiff. Count II alleges that Article III, Section 10 of the Village Charter is unconstitutional as applied to plaintiff. The third count is for violation of 42 U.S.C. § 1983, while the fourth, although unclear, appears to allege that Defendants and "unknown other" conspired to deny Plaintiff's First Amendment Rights and/or conspired to maliciously prosecute him." DE 1 at ¶¶64-71). The Court will address each count separately in order to determine if the complaint should be dismissed for failure to state a claim.

Count I

Florida Statutes § 104.185 reads:

> It is unlawful for any person knowingly to sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Plaintiff contends that this statute is vague, overly broad, and "violates First Amendment rights ... by criminalizing ... a First Amendment peaceful activity." (DE 1 at ¶43). The Court does not agree.

A statute should be construed in a manner which preserves its constitutionality. *Trushin v. State*, 384 So.2d 668 (Fla. 4th DCA 1974), *aff'd*, 425 So.2d 1126 (Fla. 1982). *See also White v. State*, 330 So.2d 3 (Fla. 1976). The statute at issue here, like the one in *Trushin* "plainly regulates conduct as well as mere speech,

[therefore] its alleged overbreadth must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Id.* (citing *Broadrick v. Oklahoma*, 413 U.S. 601,. 615 (1973) and *State v. Elder*, 382 So.2d 687 (Fla.1980)) (internal citations deleted). The Court finds the language of the *Trushin* Court particularly apt to the case at bar. "On its face, and without the necessity of construing any ambiguity or judicially inserting any limiting qualifications, the statute is confined to non-protected, clearly criminal conduct." *Trushin* at 674. The instant statute seeks "only to preserve the sanctity of the ballot" by prohibiting clearly wrongful conduct (multiply {*sic*} signing a petition) that undermines the democratic process. *Id.*

The Court finds the statute to be neither vague, unclear nor overly broad. Furthermore, the statute has not been arbitrarily applied, since, as the plaintiff admits, there were "multiple signatures of the Plaintiff on the signature sheets." (DE 1 at ¶30). Plaintiff should not be permitted to hide his blatant wrongdoing behind empty allegations of constitutional wrongdoing and, therefore, his first count should be dismissed for failure to state a claim.[2]

Count II

Plaintiff contends that by not accepting the signature sheets, the Village Clerk "manifestly violat[ed the] letter and spirit of Article III, Section 10 as well as past Village practices and precedent in its application." (DE 1 at ¶53). He does not provide the Court with any examples of this alleged "past practice" of accepting signature sheets containing multiple signatures from the same individual. Furthermore, Grinn does not allege that this portion of the Village Charter is unconstitutional, only that it was applied in an unconstitutional manner against him. To support this allegation, he cites a provision of the Charter which sets out the procedure for amending an accepted petition later found to have too few valid signatures. (*See* DE 1 at ¶50). Here, in contrast, the sheets submitted by plaintiff were insufficient on their face and were never accepted for filing by the Clerk. Grinn has not alleged that he ever attempted to submit a petition with the required

number of valid signatures, only that he was not given a chance to file a facially insufficient petition and then later be allowed to supplement it.

Grinn seems to argue that regardless of the deadline, he should have been allowed to file anything, even an obviously inadequate and fraudulent petition, and then later be given an opportunity to amend it. Grinn apparently believes the Court should fashion a system which would permit one solitary person to meet procedural filing requirements by merely signing his own name over and over again. As the Defendants succinctly point out: "Plaintiff simply did not have the required number of signatures ... to file the petition initially." (DE 24 at 6). As such his claim that it was unconstitutional to apply the Charter's provision requiring a minimum number or valid signatures against him is insufficient on its face and should be dismissed.

Count III

Plaintiff contends the Defendants violated 42 U.S.C. § 1983 by acting "willfully, knowingly, and with specific intent to deprive Plaintiff on his Constitutional rights[,]" by refusing to accept the proffered signature pages and by arresting him[3] for violating Fla. Stat. Ann § 104.185. (DE 1 at ¶¶58, 60).

To state a claim for relief a § 1983 litigant must allege two elements with some factual detail: "(1) that they suffered a deprivation of rights, privileges or immunities secured by the Constitution and laws of the United States, and (2) that a person acting under color of law caused the deprivation, either by an act or omission. *Wideman v. Shallowford Community Hosp., Inc.*, 826 F.2d 1030, 1032 (11th Cir. 1987) (citation and internal quotations omitted).

Here, the Village of North Palm Beach is a defendant. A municipality may be sued under section 1983 if the alleged unconstitutional action "implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body." *Monell v. Department of Social Servs.*, 436 U.S. 658, 690 (1978). In addition, constitutional deprivations resulting from informal procedures or "customs" are also a basis

for suit. *Id.*, at 690-91.

The remaining defendants are employees of the Village and/or Village Council members and have been sued both in their individual and official capacities. Section "1983 claims asserted against council members in their individual capacities [are] subject to a heightened pleading standard." *Arrington v. Dickerson*, 915 F.Supp. 1503, 1514 (M.D. Ala. 1995). *See also Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984); *Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485 (11th Cir.1992), *cert. denied sub nom. Deutch v. Oladeinde*, 507 U.S. 987 (1993).[4]

Grinn alleges that his petition sheets were refused for not having enough valid signatures though the Village had, on other unnamed occasions, accepted for filing petitions which had too few valid signatures. The inference of this allegation is that the individually named defendants denied Plaintiff's proposed petition because of ill-will or malice they felt against him.[5] Plaintiff is, therefore, alleging subjective bad faith on the part of these defendants. In cases where "subjective intent, such as intent to retaliate on the basis of the exercise of protected speech, is an element of plaintiff's claim, bare allegations of improper purpose are insufficient to subject government officials to discovery and the related burdens of defending of a lawsuit." *Arlington*, 915 F. Supp. at 1514 (citing *Branch v. Tunnell*, 937 F.2d 1382, 1386 (9th Cir.1991), *cert. denied*, 512 U.S. 1219 (1994) (where subjective intent is an element of a plaintiff's claim, "bare allegations of improper purpose are insufficient to subject government officials to discovery and the related burdens of defending a lawsuit."); *Harlow w. Fitzgerald*, 457 U.S. 800, 817-18 (1982) ("bare allegations of malice" are insufficient to subject government officials either to the costs of trial or the burden of discovery). Thus, Grinn must present non-conclusory allegations which set forth specific evidence of each of the City Council member's unlawful intent or conduct that violated clearly established statutory or constitutional rights of which a reasonable person would have known. *Id.* The Court does not believe that the Plaintiff has met this burden.

The nine (almost uniformly one-sentence-long) paragraphs which make up Count III are a stew of legal adjectives and

conclusory allegations which utterly fail to provide any guidance, let alone a clear statement of the facts upon which plaintiff relies; the only factual allegations are that Defendant K. Kelly (the Village Clerk) did not accept the petitions and that Defendant O'Meilia filed charges against him. While the Court is certain that these two defendants are immunized from suit for their actions,[6] that analysis is unnecessary since Plaintiff has utterly failed to provide any facts which establish that his (alleged) injuries were inflicted by the village's employees as a result of a policy or custom which was the "moving force" behind the constitutional injury. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 121-222 (1992); *Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978).* Here, Plaintiff cannot show even a single isolated policy or custom of the Village or its employees that is itself unconstitutional; let alone make the requisite showing of a persistent and widespread practice that is violative of his or other's civil rights. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985) and *Depew v. City of St. Mary's, Georgia*, 787 F.2d 1496, 1499 (11th Cir. 1986). Furthermore, Plaintiff cannot succeed in arguing bad faith on the part of the Clerk in not accepting his proffered petition since it clearly violated Florida law (not to mention the common sense notion that one can't sign a petition more than once).

The only possible "right" of which Plaintiff was deprived was his perceived right to file a sham petition. As such, count III fails to state a claim for relief and should be dismissed.

COUNT IV

As noted, Plaintiff's fourth count although unclear, appears to allege that Defendants and "unknown others" conspired to deny him his First Amendment Rights and/or conspired to maliciously prosecute him. (*See* DE 1 at ¶¶64-71). As discussed earlier, the Court does not find the statute at issue to be unconstitutionally vague nor overbroad. Furthermore the Charter provision was not applied in an unconstitutional manner against Plaintiff. Thus, even taking each of the Plaintiff's allegations as true, the Court finds no constitutional violations to have occurred. Furthermore, Plaintiff

has not sufficiently alleged any intent on the part by the Defendants to violate his constitutional rights. Absent both the intent to violate his rights and any actual violation, there can be no conspiracy.

The Plaintiff's final contention, that the Defendants conspired to maliciously prosecute him so as to "chill" his First Amendment rights, is also without merit. In order to allege a case of malicious prosecution, a Plaintiff must establish six elements:

(1) a criminal proceeding was commenced or continued against the plaintiff;

(2) the defendant commenced or caused the commencement of such proceedings;

(3) the criminal proceeding had a bona fide termination in the plaintiff's favor.

(4) there was no probable cause for commencing criminal proceedings.

(5) the defendant acted with malice; and

(6) the plaintiff suffered damage.

Weissman v. K-Mart Corp., 396 So.2d 1164, 1167 (Fla. 3d DCA 1981); *Shidlowsky v. National Car Rental Systems, Inc.*, 344 So.2d 903 (Fla. 3d DCA 1977), *cert. denied*, 355 So.2d 516 (Fla. 1978). "It is well settled that a malicious prosecution claim is established only where there is a concurrence of these six elements and the absence of any one of these elements is fatal to the action." *Guthry v. Florida Power and Light, Co.*, 460 So.2d 1032, 1033 (Fla. 3rd DCA 1985) (citing *Clements v. Eastern Airlines, Inc.*, 183 So.2d 264 (Fla. 3d DCA) *cert. denied*, 192 So.2d 486 (Fla. 1966)). Here, Plaintiff cannot allege the lack of probable cause element since he himself admitted violating the statute (Fla. Stat. Ann § 104.185) with which he was charged. (*See* DE 1 at ¶30). *See Sponder v. Brickman*, 214 So.2d 631, 632 (Fla. 3rd DCA 1968) ("An absence of probable cause for the original criminal proceeding is an essential element of the appellant's cause of action." This conclusion is not changed by the fact that the charges were ultimately dismissed against Grinn since "a dismissal of criminal charges alone does not establish an absence of probable cause." *Thomson McKinnon Securities, Inc. v. Michael*, 534 So.2d 757, 759 (Fla. 3d DCA 1988) (citing *Phelan v. City of Coral*

Gables, 415 So.2d 1292 (Fla. 3d DCA 1982) and *Weissman v. K-Mart Corp.*, 396 So.2d 1164 (Fla. 3d DCA 1981)).

CONCLUSION

The Court finds that Plaintiff has failed to sufficiently allege any cognizable cause of action and the complaint should, therefore, be dismissed for failure to state a claim upon which relief may be granted and all pending motions be denied as moot.

Pursuant to 28 U.S.C. §63(b)(1)(B) and (C), the parties shall serve and file written objections, if any, with the Honorable Kenneth L. Ryskamp, United States District Court Judge, within ten (10) days from the date of this report and recommendation.

DONE AND SUBMITTED in chambers at West Palm Beach in the Northern Division of the Southern District of Florida this April 23, 1997.

"s/ ANN E. VITUNAC"
U.S. MAGISTRATE JUDGE

---

[1] The Court has construed the allegations and factual inferences arising therefrom in the light most favorable to the plaintiff. *Sofarelli v. Pinellas County*, 931 F.2d 718, 721, (11th Cir.1991); *see also Brower v. County of Inyo*, 489 U.S. 593, 598 (1989)

[2] The named Defendants also argue that the count should be dismissed for failure to serve the Attorney General as required by Fla. Stat. Ann § 86.091. However since the Attorney General has responded and moved for dismissal, the Court will not address this issue.

[3] Malicious prosecution as a cause of action is discussed under Count IV

[4] The Supreme Court in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 167-68 (1993),

expressly refrained from deciding whether "qualified immunity jurisprudence would require a heightened pleading in cases involving individual government officials." 507 U.S. at 167; *see also Malone v. Chambers County Bd. of Comm'rs.*, 875 F. Supp. 773, 790 (M.D. Ala 1994) (finding that the holding in *Leatherman* did not repeal the heightened pleading standard in § 1983 actions where a defendant official is entitled to assert the defense of qualified immunity).

[5] In fact Plaintiff alleges in his complaint that the actions of the Defendants are "consistent with their decade long constitutionally violative behavior visited upon the plaintiff." (DE 1 at ¶ 16). And, that the actions of the Defendants "were taken because of offense to Plaintiff's social, political, moral, and religious practices {*sic*}." *Id.* at ¶ 17.

[6] Under federal law, qualified immunity protects a governmental official performing discretionary functions if his or her conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known).

CONSTITUTION OF THE UNITED STATES
ARTICLE VI, CLAUSE 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

CONSTITUTION OF THE UNITED STATES
FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

CONSTITUTION OF THE UNITED STATES
FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CONSTITUTION OF THE UNITED STATES
FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property be taken for public use without just compensation.

CONSTITUTION OF THE UNITED STATES
SEVENTH AMENDMENT

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

CONSTITUTION OF THE UNITED STATES
FOURTEENTH AMENDMENT SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C.A § 636(b)(1)

(b)(1) Notwithstanding any provision of law to the contrary ---

A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information by the defendant, to suppress evidence in a criminal case, to dismiss or permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations to which objection is made. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

28 U.S.C.A § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution. laws, or treaties of the United States.

28 U.S.C.A. § 1343

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

42 U.S.C.A. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be statute of the District of Columbia.

42 U.S.C.A § 1985 (3)

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C.A § 1988

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of the Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against the law, the common law, as modified and changed by the constitution and statutes of the States wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

FED.R.CIV.P. Rule 12(b)(6)

Every defense, in law or fact, in a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion {...}(6) failure to state a claim upon which relief can be granted{....} If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

FED.R.CIV.P. Rule 15(a)

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

FED.R.CIV.P. Rule 38(a)

The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

FLORIDA CONSTITUTION
ARTICLE VIII, SECTION 2.(b)

POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

FLORIDA TITLE IX
ELECTORS AND ELECTIONS

97.011 Short title. -- Chapters 97 through 106 inclusive shall be known and may be cited as "The Florida Election Code."

97.021 Definitions. -- For the purposes of this code, except where the context clearly indicates otherwise, the term:

(6) "Election" means any primary election, special election, general election, or presidential primary election.

(10) "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county and district offices and for voting on constitutional amendments not otherwise provided for by law.

(20) "Primary election" means an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office. The first primary is a nomination or elimination election; the second primary is a nominating election only.

(23) "Special election" is a special election called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office.

(24) "Special primary election" is a special nomination election designated by the governor, called for the purpose of nominating a party nominee to be voted on in a general or special election.

F.S. 1995

104.185 Knowingly signing a petition more than once. -- It is unlawful for any person knowingly to sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

F.S. 1997

104.185 Petitions: knowingly signing more than once; signing another person's name or a fictitious name.

(1) A person who knowingly signs a petition or petitions for a candidate, a minor political party, or an issue more than one time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083

(2) A person who signs another person's name or a fictitious name to any petition to secure a ballot position for a candidate, a minor political party, or an issue commits a misdemeanor of the first degree punishable as provided in s. 775.082 or s.775.083.

FLORIDA STATE STATUTE §166.021

Powers. --

(1) As provided in s.2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. {...}

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except: {...}

(b) Any subject matter expressly prohibited by the constitution;

(c) Any subject expressly preempted to state or county government by the constitution or by general law {...}

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affects the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

FLORIDA STATE STATUTE §316.002

Purpose. -- It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions. This section shall be supplemental to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or attempt to enforce any ordinance in conflict with the provisions of this chapter.

FLORIDA STATE STATUTE §316.007

Provisions uniform throughout state. -- The provisions of this chapter shall be applicable and uniform throughout this state and all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized. However, this section shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this chapter in the local court.

FLORIDA STATE STATUTE §847.013(4)

Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations. --

LEGISLATIVE INTENT. -- In order to make the application and enforcement of this section uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons over 17 years of age to harmful motion pictures, exhibitions, shows, representations and presentations. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1973, and relating to said subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipality government shall have the power to adopt any ordinance relating to the subject on or after such effective date. If ss. 847.07-847.09 are declared to be illegal, unconstitutional, or otherwise unenforceable, any county or municipal ordinance abrogated before ss. 847.07-847.09 were declared unconstitutional shall be in full force and effect and each county, municipality , and county-municipal government shall have the power to adopt ordinances relating to this subject.

FLORIDA STATE STATUTE §847.09

Legislative intent. --

(1) In order to make the application and enforcement of ss. 847.07-847.09 uniform throughout the sate, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons over 17 years of age to harmful motion pictures, exhibitions, shows, representations and presentations. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1973, and relating to said subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipality government shall have the power to adopt any ordinance relating to the subject on or after such effective date. If ss. 847.07-847.09 are declared to be illegal, unconstitutional, or otherwise unenforceable, any county or municipal ordinance abrogated before ss. 847.07-847.09 were declared unconstitutional shall be in full force and effect and each county, municipality , and county-municipal government shall have the power to adopt ordinances relating to this subject.

North Palm Beach Code
Charter, Art. III

Section 10. Initiative and referendum.

(a) (1) *Initiative*. The qualified voters of the village shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a village election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of village officers or employees.

(2) *Referendum*. The qualified voters of the village shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a village election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, levy of taxes or salaries of village officers or employees.

(b) *Commencement of proceedings*. Any five (5) qualified voters may commence initiative or referendum proceedings by filing with the village clerk or other official designated by the council an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the clerk or other official designated by the council may, at the committee"s request, issue the appropriate petition blanks to the petitioners" committee at the committee's expense.

(c) *Petitions.*

(1) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of the village equal in number to at least fifteen percent (15%) of the total number of qualified voters registered to vote at the last regular village election.

(2) *Form and content.* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(3) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(4) *Time for filing referendum petitions.* Referendum petitions must be filed within thirty (30) days after adoption by the council of the ordinance sought to be considered.

(d) *Procedure for filing.*

(1) *Certificate of clerk, amendment.* Within twenty (20) days after the initiative petition is filed and five (5) days for a referendum petition, the village clerk or other official designated by the council shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. Grounds for insufficiency are only those specified in subsection (c). A petition

certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk or other official designated by the council within two (2) days after receiving the copy of the certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsection (2) and (3) of Section 10(c), and within five (5) days after it is filed the clerk or other official designated by the council shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under subsection (2) of this section within the time required, the clerk or other official designated by the council shall promptly present his certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

(2) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.

(e) *Referendum petitions; suspension of effect of ordinance.* When a referendum petition is filed with the village clerk or other official designated by the council, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

(1) There is a final determination of insufficiency of the petition, or;

(2) The petitioners' committee withdraws the petition, or;

(3) the council repeals the ordinance, or;

(4) after a vote of the village on the ordinance has been certified.

(f) *Action on petitions.*

(1) *Action by council.* When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article III or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days, it shall submit the proposed or referred ordinance to the voters of the village.

(2) *Submission to voters.* The vote of the village on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than sixty (60) days from the date that the petition was determined sufficient. If no regular village election is to be held within the period described in this subsection, the council shall provide for a special election; except that the council may, in its discretion, provide for a special election at an earlier date within the described period. Copies of the proposed or referred ordinance shall be made available at the polls.

(3) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the the day scheduled for a vote of the village by filing with the village clerk or other official designated by the council a request for withdrawal signed by at least four (4) members of the petitioners' committee. Upon the filing of such

request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(g) *Results of election.*

(1) *Initiative.* If a majority of the qualified electors voting on a proposed initiative ordinance vote {*sic*} in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(2) *Referendum.* If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(Ord. No. 1-76, § 1, 2-19-76)

COMPLAINT

Plaintiff, IMMANUEL GRINN, who is a resident of the Village of North Palm Beach, sues Defendants, VILLAGE OF NORTH PALM BEACH; LAWRENCE B. KELLEY, individually, personally, and/or in his official capacity as Member of Village Council; VIRGINIUS A. MARKS, individually, personally, and/or in his official capacity as Member of Village Council; CHARLES R. O'MEILIA, individually, personally, and/or in his official capacity as Member of Village Council; SAMUEL T. VALENTE, individually, personally, and/or in his official capacity as Member of Village Council; GAIL H. VASTOLA, individually, personally, and/or in her official capacity as Member of Village Council; GEORGE W. BALDWIN, individually, personally, and/or in his official capacity as Village Attorney; DENNIS W. KELLY, individually, personally, and/or in his official capacity as Village Manager; and KATHLEEN F. KELLY, individually, personally, and/or in her official capacity as Village Clerk, and states as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to provisions of Title 28, U.S.C. Sections 1331 and 1343; and pursuant to provisions of Title 28, U.S.C. Sections 2201, 2202, and 2281 providing for declaratory and injunctive relief. The action involves the deprivation of Plaintiff's constitutionally guaranteed rights by Defendants. This case arises under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act, Title 42, U.S.C. Sections 1983, 1985(3), and 1988 creating a federal cause of action for violations of these civil rights as more fully hereinafter set forth..

2. The amount in controversy exceeds $75,000, exclusive of interest and costs.

3. Venue is placed in this district because it is where all the parties reside and where the events complained of occurred.

STATEMENT OF PURPOSE

4. The purpose of this action is to have (a) State Statute 104.185 declared unconstitutional on its face and as applied to Plaintiff; (b) to have Village Charter Article III, Section 10 declared unconstitutional as applied to Plaintiff; (c) to have

compensatory and general damages awarded to Defendant; and (d) to have punitive damages awarded to Plaintiff.

PARTIES

5. Plaintiff, IMMANUEL GRINN, is a citizen of the United States, a resident of the State of Florida, of the County of Palm Beach, and of the Village of North Palm Beach.

6. Defendant, VILLAGE OF NORTH PALM BEACH (Hereinafter may be designated as Village), is a Florida municipal corporation.

7. Defendant, LAWRENCE B. KELLEY, is a member of Village Council. He is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. He is sued individually, personally, and/or in his official capacity.

8. Defendant, VIRGINIUS A. MARKS, is a member of Village Council. He is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. He is sued individually, personally, and/or in his official capacity.

9. Defendant, CHARLES R. O'MEILIA, is a member of Village Council. He is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. He is sued individually, personally, and/or in his official capacity.

10. Defendant, SAMUEL T. VALENTE, is a member of Village Council. He is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. He is sued individually, personally, and/or in his official capacity.

11. Defendant, GAIL H. VASTOLA, is a member of Village Council. She is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. She is sued individually, personally, and/or in her official capacity.

12. Defendant, GEORGE W. BALDWIN, is the Village Attorney. He is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. He is sued individually, personally, and/or

in his official capacity.

13. Defendant, DENNIS W. KELLY, is the Village Manager. He is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. He is sued individually, personally, and/or in his official capacity.

14. Defendant, KATHLEEN F. KELLY, is the Village Clerk. She is a policymaker for the Village and was acting under color of law pursuant and/or at variance to the Village's policies, customs, and practices. She is sued individually, personally, and/or in her official capacity.

15. At all times relevant to the allegations of this Complaint and in all actions of the Village Defendants alleged herein, Village Defendants were acting under color and pretense of law and pursuant to their authority as officials of the Village of North Palm Beach.

16. Plaintiff for many years has had his First Amendment rights curtailed and/or deprived by the Village Defendants and his reputation impugned by the proximate actions of the Village of North Palm Beach and the officials of North Palm Beach acting in their individual, personal, and/or official capacities. The Village Defendants actions initiated in August of 1995 were consistent with their decade long constitutionally violative behavior visited upon Plaintiff.

17. The sustained, continuous, and unceasing attempts, conduct, and actions to inhibit Plaintiff's First Amendment rights by the legislative and executive branches of the Defendant municipal government and its agents were taken because of offense to Plaintiff's social, political, moral, and religious proclivities.

18. Proximate cause of this Complaint are two separate but interlinked actions. Prior and subsequent actions of Village policy making officials illustrate that these actions are not just aberrant behavior but rather a pervasive, pernicious pattern of invasion by the Defendants on Plaintiff's First Amendment rights stemming from Plaintiff's probing into political corruption and possible fiduciary financial corruption.

19. The Village Defendants at all times material hereto knew or should have known, that there was a complete absence of

probable cause against the Plaintiff with respect to the charge brought against him, but nonetheless procured the County State Attorney's Office to file charges against the Plaintiff because they desired to silence political opposition of the Plaintiff and his continuous investigation of probable political corruption and possible financial corruption.

FACTS

20. Plaintiff was a Member of Village Council for one term (March, 1990 to March, 1992) and unsuccessful candidate for Village Council for the years 1985, 1986, 1987, 1988, 1989, 1992, 1993, 1994, 1995, and 1996. As of date of Complaint, Plaintiff is a candidate for Village Council.

21. The gravamen of the Complaint is that the Village of North Palm Beach and its employees in their official and personal capacities over a number of years deprived and attempted to deprive the Plaintiff of his First Amendment rights in a number of ways. They include, but are not exclusive to, the deprivation of the right to petition the government for redress of grievances by Defendants' actions taken on and about August 16th, 1995 and the attempt to chill Plaintiff's utilization of his First Amendment rights by Defendants' actions taken prior and subsequent to that date.

22. On July 17, 1995 the Council of the Village of North Palm Beach passed Ordinance Number 22-95 establishing an adult entertainment district in the Village of North Palm Beach.

23. Village Charter Section III, Article 10 controls procedures for citizen petitions of initiatives and referenda. Filing of petitions for referenda must be accomplished within thirty days for an initial submission and provision is made for an extension of time if there are insufficient number of valid signatures. *See* Exhibit A.

24. During all the times mentioned herein, Plaintiff was, and now is, a person within the jurisdiction of the State of Florida and a citizen of and a resident of the Village of North Palm Beach, County of Palm Beach, in said state.

25. On August 16, 1995, at approximately 10:30 a.m., Plaintiff entered Village Clerk's Office with signed signature sheets for filing as a petition for referendum of Ordinance Number 22-95. Submission of signature sheets was in conformance with Village

Charter Section III, Article 10.

26. Plaintiff then and there made application to the Village Clerk, in accordance with the Village Charter, that the signed signature sheets be filed as a petition.

27. The Village Clerk, whose duty it was to file the signature sheets, refused to accept the signature sheets for filing, stating there were insufficient signatures.

28. This action by the Village Clerk was contrary to explicit language of Section III, Article 10 and contrary to explicit past practice.

29. On August 16, 1995, at approximately 4:50 p.m. (ten minutes before deadline for filing), Plaintiff re-entered the Village Clerk's Office with signature sheets with the alleged required number of signatures.

30. The Village Clerk refused to file the signature sheets as a petition because there were multiple signatures of the Plaintiff on the signature sheets.

31. The Plaintiff, after the filing period, left the signature sheets as a public record.

32. On August 24, 1995 Plaintiff sent a certified letter to the Village Clerk which stated that in Plaintiff's opinion the Clerk had "violated the United States Constitution First Amendment and Florida Constitution Article 1 Section 5 right of the people to petition the government for a redress of a grievance." Copy of said letter were distributed to the members of Council. *See* Exhibit B.

33. On August 21, 1995, unbeknownst to Plaintiff, Councilman O'Meilia filed charges against Plaintiff based on Plaintiff's purported violation of Statute 104.185.

34. On or about September 19, 1995 Plaintiff received Summons to appear at the North County Courthouse on September 26, 1995 for case No. 95019681MM A08 to answer an information charging Plaintiff with criminal violation of the laws of the State of Florida.

35. On or about September 26, 1995, Plaintiff pled not guilty to the criminal charge..

36. The acts of Defendants VILLAGE OF NORTH PALM BEACH, LAWRENCE B. KELLEY, VIRGINIUS A. MARKS, CHARLES R. O'MEILIA, SAMUEL T. VALENTE, GAIL H.

VASTOLA, GEORGE W. BALDWIN, DENNIS W. KELLY, KATHLEEN F. KELLY have been done under color of law since they were performing their acts in an official capacity.

37. Plaintiff's fundamental rights protected by the First Amendment of the United States Constitution and/or by the substantive protection of the Due Process Clause of the Fourteenth Amendment to the United States Constitution have been violated irrefragibly by the Defendants' actions.

38. Defendants VILLAGE OF NORTH PALM BEACH, LAWRENCE B. KELLEY, VIRGINIUS A. MARKS, CHARLES R. O'MEILIA, SAMUEL T. VALENTE, GAIL H. VASTOLA, GEORGE W. BALDWIN, DENNIS W. KELLY, KATHLEEN F. KELLY. maliciously had Plaintiff arrested illegally and without probable cause.

39. Defendants VILLAGE OF NORTH PALM BEACH, LAWRENCE B. KELLEY, VIRGINIUS A. MARKS, CHARLES R. O'MEILIA, SAMUEL T. VALENTE, GAIL H. VASTOLA, GEORGE W. BALDWIN, DENNIS W. KELLY, KATHLEEN F. KELLY, knowing of said malicious and illegal arrest without probable cause intervened in an effort to prevent the charge from being withdrawn while it was pending in the Circuit Court of the Fifteenth Judicial District in Palm Beach County, Florida.

40. On October 22, 1996 Judge Cory J. Ciklin issued his Order, "Defendant's motion to dismiss is granted and this action shall be dismissed, with prejudice[,]" thereby terminating the criminal action favorably to the Plaintiff in this case. *See* Exhibit C.

COUNT I

STATE STATUTE 104.185 UNCONSTITUTIONAL ON ITS FACE AND/OR AS APPLIED AND/OR WAS APPLIED TO PLAINTIFF.

41. Plaintiff realleges the allegations contained in paragraphs (1) to (40), as if more fully set forth herein.

42. State Statute 104.185 contains vague and overbroad prohibitions which, because not narrowly tailored and precision is lacking, subject petitioner to enforcement abuse, in that "It is unlawful for any person knowingly to sign a petition or petitions

for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

43. Although this statute purports to balance the rights of the public with those of persons who desire to enjoy First Amendment rights to petition their government for redress of grievances, it is in fact a state statute that suppresses and violates First Amendment rights without requisite compelling interest and least intrusive means by criminalizing (note the word *"shall"* in the statute) a First Amendment peaceful activity.

44. There is between the parties an actual controversy as hereinbefore and hereinafter set forth. The Plaintiff suffered, is suffering, and will suffer serious, grievous, and irreparable harm by reason of the acts herein complained of. A substantial loss or impairment of First Amendment rights has occurred and will continue to occur so long as State's and Village's conduct continues.

45. State Statute 104.185 is "where a state statute is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *Trainor v. Hernandez, 431 U.S. 434, 447 n.7, 52 L.Ed.2d 486, 494 n.7, 97 S.Ct. 1911 (1977)* and *Kugler v. Helfant, 421 U.S. 117, 125 n. 4, 44 L.Ed.2d 15, 24 n.4, 95 S.Ct. 1524 (1975)* quoting from *Younger v. Harris, 401 U.S. at 53-54, 27 L.Ed.2d 669, 681, 91 S.Ct. 746 (1970)*, quoting in turn from *Watson v. Buck, 313 U.S. 387, 402, 85 L.Ed 1416, 1424, 61 S.Ct. 962 (1940).*

46. It is the opinion of the Plaintiff that State Statute 104.185 was not intended to stand as an independent statute applying to <u>all</u> petitions. It is the opinion of Plaintiff that State Statute 104.185 was meant to be part and parcel of State Statute 99.097 and meant to apply narrowly only to petitions for <u>State</u> (not municipal) referenda. Plaintiff attaches supporting documentation to his Complaint. *See* Exhibit D.

47. As it stands, State Statute 104.185 violates the Constitution of the United States, First Amendment and Fourteenth Amendment, and, thus, is illegal, unconstitutional,

void, and without force of law in that it purports to deny Plaintiff of his right to petition his government for redress of grievances.

48. Plaintiff requests a declaratory judgment that Statute 104.185 is unconstitutional and a permanent injunction barring its enforcement.

COUNT II

VILLAGE CHARTER ARTICLE III, SECTION 10 WAS AND IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFF.

49. Plaintiff realleges and adopts by reference the allegations contained in paragraphs (1) to (48), as if more fully set forth herein.

50. Language of Village Charter Article III, Section 10(d)(1), manifestly allows amendment to signatures, if, after filing, the determination has been made that there are insufficient valid signatures.

> Within twenty (20) days after the initiative petition is filed and five (5) days for a referendum petition, the village clerk or other official designated by the council *shall* [emphasis added] complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and *shall* [emphasis added] promptly send a copy of the certificate to the petitioners' committee by registered mail. Grounds for insufficiency are only those specified in subsection (c). A petition certified insufficient for lack of the required number of valid signatures may be amended once of the petitioners' committee files a notice of intention to amend it with the clerk [... .]

51.Past Village precedent manifestly allowed amendment to number of signatures after acceptance for filing of significantly less amount than alleged threshold amount stated by Village on August 16, 1995.

52. By refusing to file the signed sheets as a petition and issuing a certificate of sufficiency certifying the petition insufficient, the Village without Due Process deprived Plaintiff of

Council review as enunciated in the Village Charter Article III, Section 10(d)(2).

> "If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by council. The council *shall* [emphasis added] review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination *shall* [emphasis added] then be a *final* [emphasis added] determination as to the sufficiency of the petition."

53. Action of Village was manifestly violative of letter and spirit of Article III, Section 10 as well as past Village practices and precedent in its application.

54. Plaintiff requests a declaratory judgment that Article III, Section 10 was unconstitutionally applied against the Plaintiff and a permanent injunction barring its misapplication as enforced against the Plaintiff on August 16, 1995.

COUNT III

VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. SEC. 1983

VILLAGE OF NORTH PALM BEACH, LAWRENCE B. KELLEY, VIRGINIUS A. MARKS, CHARLES R. O'MEILIA, SAMUEL T. VALENTE, GAIL H. VASTOLA, GEORGE W. BALDWIN, DENNIS W. KELLY, KATHLEEN F. KELLY.

55. Plaintiff herein reaffirms and realleges paragraphs (1) to (54) of the complaint as if more fully set forth herein and further alleges:

56. The Plaintiff has a right to exercise each, every, and all his First Amendment freedoms, liberties, and rights, said rights secured to the Plaintiff by the First and Fourteenth Amendments to the Constitution of the United States and by 42 U.S.C. Section 1983.

57. The Village Defendant, including its agents and employees acting in their individual, personal, and/or official capacities, owed the Plaintiff a Fourteenth Amendment duty.

58. The Plaintiff has a right to be free from illegal seizure of his person and a right to be free from unlawful arrest, said rights secured to the Plaintiff by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United states and by 42 U.S.C. Section 1983.

59. Defendants, LAWRENCE B. KELLEY, VIRGINIUS A. MARKS, CHARLES R. O'MEILIA, SAMUEL T. VALENTE, GAIL H. VASTOLA, GEORGE W. BALDWIN, DENNIS W. KELLY, KATHLEEN F. KELLY, individually and in concert with the others, with common plan, design and purpose acted under pretense, color and virtue of law and their official capacities, but said acts were illegal, and each Defendant, individually and in concert with the others acted wilfully, knowingly, and with specific intent to deprive Plaintiff of his Constitutional rights.

60. As described above, the acts and omissions of Village Defendant, including its agents and employees acting in their individual, personal, and/or official capacities, were under color of law, to wit, under color of the statutes, ordinances, regulations, customs, and usages of the State of Florida and/or the Village of North Palm Beach and have deprived Plaintiff of his First, Fourth, Fifth, and Fourteenth Amendment rights, among which and including his rights of speech, press, religion, assembly, and petition.

61. Village Defendant, including its agents and employees acting in their individual, personal, and/or official capacities, ordered or personally participated in the acts, or knew or should have known that the unconstitutional acts were taking place and acquiesced in them. Their conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).*

62. "{M}unicipal liability under Section 1983 attaches where -- and only where -- a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to

the subject matter in question." *Pembaur v. Cincinnati, 475 U.S. 469, 483, 89 L.Ed.2d 452, 465, 106 S.Ct. 1292 (1986).*

63. Outrageous conduct of the Village Defendant, including its agents and employees acting in their individual, personal, and/or official capacities, was causally responsible for Plaintiff's constitutional deprivations. The Village Council ratified (minimally by its inaction) the Village Clerk's action.

COUNT IV

64. Plaintiff realleges and adopts by reference the allegations contained in paragraphs (1) to (63), as if more fully set forth herein and further alleges:

65. On or about August 16th, 1995 and continuing until on or about August 30th, 1996, Defendants entered into a mutual understanding with each other and with others presently unknown to the Plaintiff, whereby they would seek to arrest, detain, harass, intimidate, embarrass, annoy, abuse, and otherwise interfere with the liberty of and otherwise deny equal protection of the laws to Plaintiff.

66. In furtherance of the conspiracy, Defendants committed the overt acts of commission and omission alleged above, among others.

67. The Village Government officials intended the results of their conduct, to wit, to deny Plaintiff his right to petition for redress of grievances, by refusing to file the signature sheets as a petition.

68. The Village Government officials knowingly punished Plaintiff for his exercise of his First Amendment rights by claiming victim status in a Complaint embracing State Statute 104.185.

69. The Village Government officials' impermissible evil motive in prosecution of Plaintiff was intended to chill further exercise by Plaintiff of Plaintiff's First Amendment rights.

70. The Village, and/or the Village officials in their official capacity, and/or the Village officials in their personal capacity acted peremptorily, and/or arbitrarily, and/or maliciously and/or wantonly with the purpose of oppressing or suppressing Plaintiff's

exercise of his First Amendment rights.

71. At all times herein mentioned, Plaintiff's conduct and actions were constitutional, peaceful, not abusive or offensive, nor was Plaintiff engaged in any activity which tended to breach the peace.

DAMAGES

72. Plaintiff realleges the allegations of paragraphs (1) to (71) above and further alleges as follows:

73. As a result of the acts alleged herein, Plaintiff was injured in the following ways:

a. Plaintiff was deprived of his constitutional rights.

b.Plaintiff suffered and continues to suffer great humiliation and embarrassment.

c. Plaintiff suffered and continues to suffer great shame and damage to his reputation.

d.Plaintiff suffered and continues to suffer psychological trauma, great mental anguish, and emotional upset.

e. Plaintiff was deprived of the enjoyment of life, liberty, and freedom from their deprivation without due process of law.

f. Plaintiff was deprived from his right to equal protection of the law.

74. The acts of Defendants described above were all performed with malice and premeditation under color of state law with willful and wanton disregard of Plaintiff's rights under the First and Fourteenth Amendments of the Constitution and in contravention of the letter and spirit of 42 U.S.C. 1983.

75. As a result of the gross, willful, and flagrant violations of Plaintiff's constitutional rights as set out above, Plaintiff is entitled to a substantial award of punitive damages.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, Immanuel Grinn, respectfully requests that this Court:

A. Declare that State Statute 104.185 is unconstitutional on

its face as a matter of law;

B. Declare that State Statute 104.185 is unconstitutional as applied to Plaintiff;

C. Declare that Charter Article III, Section 10 is unconstitutional as applied to Plaintiff.

AND, Plaintiff, Immanuel Grinn, requests the following relief against the Village Defendants jointly and severally:

A. Compensatory damages in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000).

B. General damages in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000).

C.Reasonable costs and attorneys' fees.

D. Such other and further relief as to the Court appears reasonable and just.

AND, Plaintiff, Immanuel Grinn, requests the following relief against the following Defendants severally in that the official's conduct was motivated by "evil intent, or when it involve{d} reckless or callous indifference to the federally protected rights of others." *Smith v. Wade, 461 U.S. 30, 56, 75 L.Ed.2d 632, 651, 103 S.Ct. 1625 (1983)*:

A. Punitive or exemplary damages of FIFTY THOUSAND DOLLARS ($50,000) against Defendant LAWRENCE B. KELLEY.

B. Punitive or exemplary damages of ONE MILLION DOLLARS ($1,000,000) against Defendant VIRGINIUS A. MARKS.

C. Punitive or exemplary damages of TWO MILLION DOLLARS ($2,000,000) against Defendant CHARLES R. O'MEILIA.

D. Punitive or exemplary damages of FORTY THOUSAND DOLLARS ($40,000) against Defendant SAMUEL T. VALENTE.

E.Punitive or exemplary damages of FOUR HUNDRED THOUSAND DOLLARS ($400,000) against Defendant GAIL H. VASTOLA.

F. Punitive or exemplary damages of FIVE HUNDRED THOUSAND DOLLARS ($500,000) against Defendant GEORGE W. BALDWIN.

G. Punitive or exemplary damages of TWO HUNDRED

THOUSAND DOLLARS ($200,000) against Defendant DENNIS W. KELLY.

H. Punitive or exemplary damages of THIRTY THOUSAND DOLLARS ($30,000) against Defendant KATHLEEN F. KELLY.

DEMAND FOR JURY TRIAL

Plaintiff hereby Demands a Jury Trial in this Action.

(date)

Respectfully submitted
"s/ Immanuel Grinn"
Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720
(561) 626-5425

App.(K-1)

Immanuel Grinn
536 Greenway Drive
North Palm Beach, FL 33408

March 9, 1989

Village of North Palm Beach
Village Hall
North Palm Beach, FL 33408

Att: Village Council
Village Manager
Village Clerk
Village Department Heads

1. I am the owner of all 14" X 22" two color political signs which promote my candidacy for the N.P.B. Village Council.

2. Any attempt by the Village, Village officials, Village employees, or for that matter anyone else who will attempt to remove those signs will be construed by me as an infringement on my Constitutional right of free political expression, guaranteed to me, and broadly interpreted by the United States Supreme Court.

3. Any sanction the Village, Village officials, or Village employees might levy against me will be interpreted by me as an infringement of my Constitutional right of free political expression.

4. According to the Village Code, the Village must notify the owner of signs that the owner of the signs is in violation and the owner must come into compliance within 10 days. Any attempt to remove or actual removal by the Village, its officials, or its employees of those political signs which are on private property will be interpreted by me as strictly politically motivated if the ten day allowance period is not observed.

5. The sign code as written should be applicable only to commercial signs. This question has been resolved years ago by the United States Supreme Court.

6. Please govern yourselves accordingly.

Thank You,
"s/ Immanuel Grinn"
Immanuel (Manny) Grinn

Sworn to and subscribed before me this 9th day of March, 1989.

"s/ Dolores R. Walker"
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAY 17, 1991
BONDED THRU GENERAL INS. UND.

App.(L-1)

CERTIFIED MAIL

THE VILLAGE OF
NORTH PALM BEACH
PUBLIC SERVICE DEPARTMENT
645 PROSPERITY FARMS ROAD
NORTH PALM BEACH, FLORIDA 33408 . 305-626-0212

March 10, 1989

Mr. I Grinn
536 Greenway Drive
North Palm Beach, FL 33408

Dear Sir:

Your letter dated March 9, 1989 regarding placement of signs has been received and noted.

Please be aware that Village employees will enforce all Village ordinances in the manner in which they are written.

Also, be aware that Village employees will enforce all Village ordinances in the manner in which they are written.

It is noted that your letter states that you are notifying the Village that you intend to perform an unlawful act by posting signs in violation of Section 6-119 of the Village Code.

This is notice that you, as he acknowledged owner of the signs as well as the owner, lessee, renter or agent of the owner of the property on which the sign is placed, will be notified of each and every violation.

Threatening legal action against Village employees as well as notice to commit blatant and intentional violation of any code or ordinance or law, certainly is a reflection of the sincerity and integrity of any person and most especially a long term Village resident.

If a Village ordinance is not necessary or unconstitutional, then it should be repealed.

Please govern yourself accordingly.

Sincerely yours,
"/s C R O'Meilia"
C. R. O'Meilia, P.E.
Director of Public Services

eg
cc: Village Council
Village Manager
Village Attorney
Code Enforcement
Public Safety

App.(M-1)

PETITION FOR REFERENDUM ON ORDINANCE NUMBER 31-91

By my signature I attest that I am registered voter qualified to vote in the Village of North Palm Beach. By my signature I wish the North Palm Beach Village Council to reconsider Ordinance Number 31-91. I have had the opportunity to read the full text of Ordinance Number 31-91 before I signed this petition.

If the Council fails to repeal Ordinance Number 31-91 so reconsidered, the qualified voters shall be able to approve or reject Ordinance Number 31-91 at a village election held not less than (30) days and not later than sixty (60) days from the date that the petition was determined sufficient. The council may provide for a special election at an earlier date within the prescribed period.

"s/ Immanuel Grinn" 536 Greenway Drive North Palm Beach, FL 33408

App.(N-1)

{Re-typed from handwritten submittal.}
Affidavit

As circulator of the petition I execute the following affidavit which I attach to each paper of the petition.

RECEIVED
OCT 04 1991
VILLAGE
CLERK's OFFICE
2:55 p.m.

1. I personally circulated the paper.
2. There is one (1) signature thereon.
3. All signatures were affixed in my presence
4. I believe them to be the genuine signatures of the persons whose they purport to be.
5. Each signer had an opportunity before signing to read the full text of ordinance Number 31-91 seeking to be reconsidered

"s/ Immanuel Grinn"

State of Florida
County of Palm Beach

Before me this day personally appeared Immanuel Grinn, who, being duly sworn, deposes and says the above information is true.

"s/Immanuel Grinn"
(signature of person making affidavit)

Sworn to and subscribed before me this 4th day of October, 1991.

"s/ Kathleen K. Kelly"
Notary Public
State of Florida

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: MAY 24, 1993
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS
MY COMMISSION EXPIRES_____

App.(O-1)

VILLAGE OF NORTH PALM BEACH

MEMORANDUM

TO: George Baldwin, Village Attorney

FROM Kitty Kelly, Village Clerk

RE: Petition for Ordinance 31-91

DATE: October 4, 1991

Attached is copy of petition that has been resubmitted today by Councilman Grinn. According to our Charter, I must certify sufficiency within five days after it is filed, or state insufficiencies that may apply.

Please contact me after your review. Thank you.

"s/Kitty"
/kk

Attachments

cc: Council
Dennis Kelly
C.R.O'Meilia

10-4-91 4:30 P.M.
Post-it TM brand fax transmittal memo 7671 # of pages 3
To George Baldwin From Kitty Kelly
Co. NPB
Dept. Attorney Phone # 848-3475
Fax# 842-1548 Fax # 881-7469

LAW OFFICES
BRANT AND BALDWIN
330 FEDERAL HIGHWAY
LAKE PARK, FLORIDA 33403

TELEPHONE (407) 845-1700
FACSIMILE (407) 842-1548

William Brant
George W. Baldwin

Charles M. Pigott
of Counsel

VIA FACSIMILE

October 8, 1991

Ms. Kitty Kelly
Village Clerk
Village of North Palm Beach
Village Hall
501 U.S. Highway #1
North Palm Beach, Florida 33408

Re: Petition for Referendum on Ordinance No. 31-91

Dear Kitty:

I have reviewed the Petition for Referendum on Ordinance No. 31-91 and Affidavit which you had faxed me for a review and response.

One of the questions you asked me to address is to whether or not you are required to complete a Certificate as to its sufficiency within five (5) days from the date the Petition was filed or by October 9, 1991. Under Article III, Section 10(c) of the Charter, it provides a period of thirty (30) days after after {*sic*} adoption of the subject Ordinance for referendum petitions to be filed. The subject Petition with one signature could be only one of many that could be forthcoming within the said thirty (30) day period and the Certificate as to Sufficiency would address all such Petitions

relative to Ordinance 31-91 that are circulated and filed within the said thirty (30) day period. It is my opinion that the Charter requires the Village Clerk to complete a Certificate as to Sufficiency upon completion of the filing for Referendum Petitions and not on a piecemeal basis.

Therefore, it would be my opinion that the Village Clerk would only complete a Certificate as to Sufficiency (or insufficiency) upon expiration of the thirty (30) day period called for in Article III, Section 10 (c) (4) or upon the Committee who filed the initial Affidavit stating in writing that they have completed the Petition process as to Ordinance 31-91 and requesting the Village Clerk to complete a Certificate as to its Sufficiency.

If you were notified by the Petitioners' Committee that the Petition has been circulated and completed as filed with you on October 4, 1991, then I find that the Certificate {*sic*} is legally insufficient under the Charter of the Village of North Palm Beach as follows:

1. The number of signatures is not equal in number to at least 15% of the total number of qualified voters registered to vote at the last Regular Village Election.

2. The petition does not contain or have attached thereto the full text of Ordinance 31-91.

3. Although I find the Affidavit portion of the Petition to be legally sufficient, the word "names" should be inserted between the words "whose" and "they" that appears in paragraph 4.

If the Petitioners' Committee is going to file additional papers in regards to its Petition for Referendum on Ordinance No. 31-91, it would be helpful in determining sufficiency if the Petitions had a place for the printing of the name after the signature.

If you should have any questions, please don't hesitate to contact me.

Very truly yours,

"s/ George W. Baldwin"
GEORGE W. BALDWIN

GWB:br
cc: Mayor
Council

Manny Grinn, ed.
first year, tenth issue
THE NORTH PALM BEACH

REALITY

THE ALTERNATIVE VILLAGE NEWSLETTER

UPDATE

I found myself the recipient of the July 1995 official **THE VILLAGE NEWSLETTER** with Dennis W. Kelly's Manager's Message which states that "the Village found itself the recipient of two adult entertainment businesses." If a murder occurred in the Village, would the Village be a "recipient" of a murder? He goes on to say, "the Village was caught off guard by the establishment of these two businesses." Why was the Village caught "off guard" when "Fine Arts, Inc." clearly stated its business was to sell "adult videos" in its application of August 1994 (misdated August 1996) for an occupational license. Perhaps the Village was caught off guard when "Fine Arts, Inc." paid its fee for a "doing business as (d.b.a)" legal name of "Adult Video Warehouse." Was the Village then caught off guard when "Fine Arts, Inc." applied for a pole sign with its d.b.a. name? Was the Village caught off guard when the Director of Public Services approved their red temporary sign? Or was the Village caught off guard when the application for a permanent sign was reviewed and approved by the Planning Commission at their regular meeting? How long has "Wally's World of Video" (805 Northlake Blvd) discreetly been doing business in those sleaze videos? (For the answer see the third paragraph under "Lies, Lies, Lies"). Was the Village caught off guard with Wally's? Is the Village off guard with "Secret Treasures (727 Northlake Blvd.)?

Mr. Kelly goes on, "It has taken us a few weeks to unravel how this happened." I don't think his unraveling exposes what really transpired as detailed previously in the sixth issue of **REALITY.** Closer to the truth would be the substitution of the word "cover-up" for the word "unravel." Then comes this yummy *non sequitur*: "The following is about as close an explanation as we can provide at this time because the Village is currently

developing strategy to prevent future businesses of this type from coming into this Village." What has developing a strategy got to to do with giving a full explanation of the history of his blunder?

"We should approach such an ordinance from a worst case scenario. That means that if the code is written the way we like it, we may very well be sued." I can only guess what the Village Manager means. (His attempts at written communication should come with a warning label: "For instructional purposes only. Atrocious construction and usage. Impressionable children in their formative years are not meant to read this material without a responsible adult present.") The writing of a code does not initiate a law suit. The objection to its specific enforcement may. The best expenditure of our tax money is in defense of our community values and property values. So what did the Village geniuses do to have an ordinance written that would be eminently defensible? They hired a land planner. Not an attorney, but a land planner. The same land planner which (with the concurrence of the Village Attorney) wrote the inadequate language quoted in the seventh issue of **REALITY** for the Twin City Task Force C-3 zoning. .

According to the proposed ordinance, "Proper separation of adult entertainment establishments prevents the creation of 'skid-row' areas in the Village which results from the concentration of these establishments and their patrons." *The Random House Dictionary* defines "skid row" as " an area of cheap barrooms and rundown hotels, frequented by alcoholics and vagrants." The dictionary defines "honky-tonk" as a "cheap, noisy, and garish nightclub or dancehall." There is plenty of evidence that "adult entertainment" businesses do <u>not</u> create "skid-rows." It seems that honky-tonk is hunky-dory with the consultant and our Village Attorney.

The proposed ordinance says that **"...in the C-1 zoning district ... adult entertainment establishments are an expressly permitted use..."** "Expressly permitted" (although not within 2000 feet of another adult entertainment establishment, 1000 feet from an establishment which serves liquor, a religious institution, or an educational institution, 500 feet from a residentially zoned district or park). "Expressly permitted." It sounds like an invitation to me.

App.(Q-3)

LIES, LIES, LIES

The following quotations are excerpts from a Sept. 6, 1991 letter from Village Manager Dennis W. Kelly to the Village Attorney George Baldwin. Emphasis is mine.

"Following their investigation, the two detectives submitted a verbal report to Mr. O'Meilia and indicated that Patty's Place was not selling anything illegal per Florida Statutes, Chapter 847 (obscene literature, profanity)."

"If the Council revokes the occupational license to Patty's Place, to what extent is the Council compelled to revoke the occupational license of the various video stores that also have a similar back room for the sale of pornographic material? ... To the best of our knowledge and belief, there is one video store on Northlake Boulevard which has a back room."

"In an effort to draft our own ordinance, Chapter 847 Florida Statutes, is very explicit in Section 847.013 (Legislative Intent) where it indicates counties and municipalities are prohibited from passing their own ordinance in order to maintain statewide uniformity in the laws. This same language in Legislative Intent is repeated in Section 847.09." The Village Attorney agreed with the Village Manager. The whole truth is that this prohibition extends only to laws regarding persons under 17 years of age. The prohibition does NOT extend to laws that are directed at adults. Laws that are directed at adults are governed by COMMUNITY STANDARDS.

"As far as the use of Section 17-30, the staff found one letter ... dated May 13, 1976 [where] the Council revoked [an] occupational license .... According to that letter, the Council exercised its authority as provided in Section 20-11 of the Village Code. Unfortunately, I was not able to find a cross-reference of 20-11 ..." The Village Attorney did not disagree with the Village Manager. Well, I didn't have their problem. It is indexed in the Code under "LICENSES AND PERMITS, Occupational licenses, Suspension or revocation of." It's Section 17-34.9.

Contrast what he says in the first two quoted paragraphs above

to the following quoted excerpt from a letter dated July 6, 1995 to a concerned married couple who had to send two letters (first dated May, 25, 1995, the second June 16, 1995) before they received this reply: "the July issue of the Village Newsletter with the Manager's message in the back ... explains the how and why the Adult Video Store (*sic*) and the Crystal's (*sic*) Bar and Grill (*sic*) located in North Palm Beach .... The Village did not opt out of the County's code in 1988 and, subsequently (*sic*) was subject to that code without having their (*sic)* own code in place. The whole issue of adult entertainment was simply not on anybody's minds (*sic)* since 1988.... Why the Village did not address this issue back in 1988 is beyond my purview (*1/2 sic*)." *sic, sic, sic, sic, sic, sic,* sick.

He says on July 6 that the whole issue of adult entertainment was simply not on anybody's mind since 1988??? What about the Sept. 6, 1991 letter??? What about what he said at the June 13, 1995 town meeting, that 5-1/2 years ago he discussed adult entertainment with the Council, but that it was decided to concentrate on the Twin City Mall???

He says that the Village did not have its own Code in place in 1988??? What about Ordinance 65-121 that was still in our code as Section 19-65 until 1991??? And it is his fault that there is no Code section now (although 65-121 may still be a valid ordinance, *viz* (5) page 4).

On July 5 the Planning Commission, despite eloquent pleas from a concerned citizen, unanimously (upon motion of Mr. Gauthier) recommended to Council to enact the proposed adult entertainment ordinances. The concerned citizen had redundantly expressed his fear that the positive recommendation by a quasi-judicial Village Board would be the initial step in the setting of community standards which condone and expressly permit sleaze business. To no avail. To this observer, the citizen's disconsolation was quite evident as his warnings were ignored. Mr. Gauthier in a display of pique prefaced his recommendation by indicating that his motion was a way to avenge Council overriding Commission recommendations arrived at after arduous and protracted meetings. He wanted to "throw it into the lap of Council." Those remarks will not be reflected in the official

minutes unless someone on the Commission asks to have the official minutes amended to reflect those words. As the minutes now read, the Planning Commission deliberately and aggressively approved of the ordinances. The Planning Commission, the body that is charged with enhancing property values, became an unintentional collaborator of those who would bring down property values. *Tant pis.*

At this meeting the so-called expert, Mr. LaRue, said "I don't want to be a so-called expert."

At the July 6 Special Meeting, the Council, in its 4-0 (Councilman Kelley absent) first reading action approved the ordinances (it takes two readings to enact) . The four Council members clearly evidenced (to those who bother to look) their abject hypocrisy, All Regular Council Meetings open with an invocation. It is Council which has injected religion into government meetings. Yet these professed religionists are bowing to simple crass expediency. One cannot serve two masters, one cannot serve both God and Mammon (Matthew 6:5). The Council opted for Mammon (fear of a potential lawsuit). Each member is a sanctimonious Tartuffe who *quastschen ins unreine.*

Many in the Village are being sandbagged into believing that there must be some place in the Village that sleaze business must be accommodated. This is absolutely false.

1. The Federal Constitution does not protect obscenity.

2. State Statute 847.011 prohibits even giving away any articles even purporting to be for obscene use.

3. The County Charter Sec. 1.3 states that municipal ordinances **shall** prevail over county ordinances to the extent of any conflict regardless of the time of passage of the municipal ordinance with only three exceptions which were passed by referendum to amend the Charter. Those three exceptions have nothing to do with sleaze business or what is now known by the ubiquitous expression "adult entertainment."

4. Section 17-143 of the County Code states that the "Adult Entertainment Code" article **shall** be effective in municipalities unless the municipality opts out or **shall** *be effective up to the extent of conflict with the municipal ordinance.*

5. Our municipal ordinance 65-121 Section 7 refers to

prostitution, moral perversion, and lewd acts. As previously noted this ordinance ultimately was codified as Section 19-65. The Municipal Code Corporation in its May 5, 1988 memorandum indicated that the references to prostitution in our Section 19-65 was covered by Florida Statutes Chapter 796 and, thus, the Village Code Section 19-65 should be amended. Instead of amending the section by removing references to prostitution, the entire section was deleted from the Village Code, but the ordinance as it refers to moral perversion and lewd acts is, or should be, extant.

6. The Village gave the sleaze businesses licenses, the Village can't revoke them. Wrong! There is a **prohibition** against giving licensure to people whose business is defined as a misdemeanor -- and the State ordains that the selling of obscene material is a misdemeanor.

7. If the ordinances go through, I will mount a campaign to go to referendum to repeal the ordinances. I promised that to Council. I keep my promises. I will need your help in collecting signatures on petitions.

8. This issue is vital on moral grounds. Of secondary interest is the negative impact on property values that blessing sleaze business (even one!) will have.

9. Remember how candidate V.A. Marks, M.D stood up to all that legal opinion which said Target must be allowed in. He voted against Target. Was it just to curry voters of OPC? Nah.

VILLAGE MANAGER'S FAVORITE

At the June 13th 1995 "town meeting," the Village Manager (who said he was a "private citizen" and not the Village Manager) Mr. Dennis W. Kelly opened his remarks with " I have known John [Frerking] for about seven years ... we have a strong first name basis ...." On June 29, as Village Manager, Mr. Kelly sent the draft adult entertainment ordinances with the same identical letter addressed to Mr. Keith Taylor, Ms. Rebecca Duke, Ms. Carri Spikowski, Mr. Tom Barkdull, Mr. Gary Brandenburg, and Reverend John Frerking (Village residents all). All the letters originally have a typed formal salutation and a typed formal close.

Only one of the letters has a slash mark through the typewritten surname with a handwritten first name added. Only one of the letters has the informal signature "Dennis," the rest have the formal signature "Dennis W. Kelly." The "first name" basis letter went to "Gary," not "John." Gary is the attorney representing the developers of the proposed PUDs that are presently before Council for its approval. It should be of real comfort to Villagers to know of this cozy relationship between suppliant and factotum.

"POWER TENDS TO CORRUPT ..."

To fulfill the megalomaniacal ambitions of the Village Manager, the Army Reserve bird Colonel is building and spending our Village into Kelly City. The more the budget, the more employees, the more capital improvements, the more aggrandized POWER, the more he will demand in compensation and the Council wussies will give it to him. He has the gall to say that he wants to take over the responsibility for managing the Country Club. He said he would devote 20% of his time to the management of the Country Club. The guy can't manage what he has now, but his arithmetic will allow him to devote 120% of his time to his Village responsibilities.

IT'S ONLY (YOUR) MONEY

Comparison when VM Kelly came on board ('89-'90) to present proposed ('95-'96) budget.

YEAR	TAXABLE ASSESSED VALUE	MILLAGE	TOTAL AD VALOREM
1989-90	$591,067,496	4.25	$2,512,032
1995-96	691,296,763	5.65	3,905,827

Figure that if half the added $100,000,000 taxable value comes from annexation, then assessed value has increased, on

average, ten percent (10%). This year's proposed millage is a real increase of 8.65% over last year. The total increase in your Village tax just this year compared to when he came in: 36%, of which 3% can be attributed to inflation.

The Village is avoiding a bond issue by going to a loan. You may remember my prediction of a $10 million bond issue. The loan is for $4 million. It won't go to vote because by sleight of hand the Village Manager is not collaterizing the loan with ad valorem taxes. But that is Black Smagic. What about the $6 million difference? For one thing the Country Club Clubhouse rebuilding has been put into abeyance. For another, the $1 Million for Space Study implementation and the $1.15 Million for Recreation Study implementation are only " PHASE I" projects. Phase II of the Recreation Plan is estimated at $1.8 million. Some more information you probably don't want, but I'm giving it to you anyway:

THE LOAN

$1,150,000	Implementation of Master Recreation Plan (Phase I)
1,000,000	Implementation of Village Hall Space Study (Phase I)
469,000*	800 MHZ Radio System for Public Safety
450,500**	Replace one Fire Truck
370,500#	Shoreline Protection (FIND -- Phase I)
220,000***	Establish Patient Transportation Service two ambulances)
200,000	First six month borrowing interest
90,000****	Library Automation
50,000	Borrowing cost (approximate)

*from page 9C, $429,000 on page 9B
**from page 9C, $450,000 on page 9B
***from page 9C, $219,474 on page 9B
****from Page 9C, $90,153 on page 9B

#If FIND doesn't come through could be double.

SOME OTHER STUFF

$ 64,650	Replace three Patrol Cars
60,000	Replace one Packer Truck
60,000	Resurface certain streets in Village
34,500	Replace three Cushman Trucksters
31,000	Purchase one Rescue EMT unit for Substation
11,588	FCIC Computer for Public Safety
10,000	Celebration of Village's 40th Anniversary & Christmas in Dixie Parade
10,000	Firemen Hazmat Training & Equipment

Most of the items, in my opinion, are questionable. There are other items hidden in the budget which have important policy as well as financial consequences. If you want to do something about it, call me -- 626-5425. Leave a message if I'm away.

This Thursday July 14 come to the Council Meeting 7:30 P.M. in Village Hall Council Chambers. It could be very interesting from the beginning. Later on the PUDs will be discussed. Bring the **Reality** ninth issue.

App.(R-1)

Immanuel Grinn
536 Greenway Drive
North Palm Beach, FL 33408-3720

626-5425

August 24, 1995

Ms. Kathleen "Kitty" Kelly
Village Clerk
Village of North Palm Beach
501 U.S. Highway #1
North Palm Beach, FL 33408

Dear Ms. Kelly,

Please be advised:

Approximately a week preceding, you, the Village Clerk, informed me that the deadline for presentation of petitions for the reconsideration by Council of Ordinance 22-95 and, failing that, the referendum on the repeal of Ordinance 22-95, would be August 16th 1995 at 5:00 P.M.

On August 16th 1995, at approximately 10:30 a.m., I delivered to the Village Clerk's office a number of signature forms. You refused to accept the signature forms as petition on the grounds that there were less than the required signatures which would represent at least 15% of the registered voters of North Palm Beach. The 15% converts to approximately 1300 signatures. The signatures submitted totaled between between 500 and 600. Your refusal to accept the signature forms as petitions at that time was witnessed by Ms. Melissa Teal, Assistant Village Clerk. I can find nothing in the Village Charter that grants you the option to refuse to accept signature forms as petitions. You stated at that time that "you cannot buy the ten days" by submitting signature forms as petitions without at least 1300 signatures. You stated that the extension of time to collect more signatures could be granted only

if at least a total of 1300 signatures were submitted, but that subsequent to that submittal less than 1300 would be determined to be valid signatures.

I feel you have violated the United States Constitution First Amendment and Florida Constitution Article I Section 5 right of the people to petition the government for a redress of grievance. All the regulations of North Palm Beach Charter Art. III Section 10 had been complied with. Any ambiguity should have been resolved in the committee's favor.

On August 16th 1995 at approximately 4:50 p.m. I submitted signature forms with a total number of signatures in excess of 1300. Once again you refused to accept the signature forms as petitions, this time on the grounds that many of the signatures (approximately 800) were all of one Immanuel Grinn. You telephoned the Village Attorney in my presence and it seemed he supported your position. Your refusal was witnessed by Ms. Teal. Another person present was Ms. Lucia Traugott. You denied my request to write me the reason(s) you refused to accept the signature forms as petitions. You wanted me to take back the signature forms. I refused since the signature forms were a matter of public record. I left the Clerk's office with you standing, holding the signature forms in your hands.

Very truly yours,
"s/ Immanuel Grinn"

cc: Mayor & Council
D. Kelly
G. Baldwin

NORTH PALM BEACH
POLICE DEPARTMENT

CASE NUMBER: 95-5227

DATE: 8/21/95
TIME: 4:35 p.m.

WITNESS STATEMENT

I, Kathleen F. Kelly RESIDE AT (w) 501 U.S. Highway One, NPB & MAKE THIS VOLUNTARY STATEMENT TO D. Sgt. R. Pauldine WHO HAS IDENTIFIED HIMSELF AS A POLICE OFFICER. I AM MAKING THIS STATEMENT OF MY OWN FREE WILL, & NO THREATS, PROMISES OR FORCE HAVE INDUCED ME TO COMPLY.

A Petitioner's {*sic*} Committee, led by resident Manny Grinn, had formed to call for the repeal of Ordinance 22-95, passed by the Village Council on July 17, 1995. According to the Village Charter, a petition for repeal or Referendum must be submitted within 30 days of passage of the ordinance. On Wednesday, August 16, 1995, the 30th day after passage of the Ordinance, at approximately 9:45 a.m., Manny Grinn, representative for the Petitioners' Committee, came into my office to submit his petition forms. It was obvious from the small stack of papers that he had not fulfilled the requirement, which was to collect signatures of 15% of the voters of the Village (1,292 signatures). Mr. Grinn is experienced in the petition process, having successfully led a petition drive to Referendum in 1992 {*sic*}.

It was apparent to me that Mr. Grinn knew that he had only collected 400+ signatures, but wanted to submit it anyway and have me continue the process and ultimately declare the petition "insufficient", thereby giving him the right to "amend" and gain 10 to 17 days additional days in which to get the required number.

However, as I interpret the Charter of the Village, the initial filing of a petition is predicated on 15% of the voters of the Village having signed it, and filling it in proper form, the key words being "proper form". I showed Mr. Grinn the rules in the Charter. He argued that I should accept the document and declare it

"insufficient". My interpretation of the procedure is that "sufficiency" or "insufficiency" is declared based on verification of valid signatures, the key word being "valid".

I therefore did not accept these papers. He asked me when the deadline was, and I told him he had until 5 p.m. (this information had already been given to him during the previous week.)

Later, the same afternoon (approximately 3:45 p.m.), Mr. Grinn came in again with affidavits needing notarization for more signatures. As I had previously done, I had Mr. Grinn take the required oath and sign his affidavits in my presence, after which I notarized them. I did not check the signatures on the attached pages, since he was not submitting them, he was only preparing his affidavits and would presumably be submitting the petition as one document by 5 p.m.

Mr. Grinn then left and presumably went to the North Palm Beach Library.

At 4:30 p.m., a Village resident, Lucia Traugott, came into my office to ask what the status of the petition drive was. I told her that it had not yet been filed, but I expected it to be filed by the deadline. She then decided to wait in the office until that time.

At 4:55 p.m., Mr. Grinn returned with a large bundle wrapped in white plastic. He then removed the bundle and handed me "the petition". I cleared my desk to receive it and date-stamp it. As I looked at it, I realized that many pages all had the same signature on them, the signature of Mr. Grinn. Mr. Grinn submitted his own signature 812 times.

I informed him that he had not met the collection requirement, and Mr. Grinn argued that the Charter requirement was to obtain signatures equal in number to 15% of the registered voters, which he had done by submitting 570 various signatures plus 812 signatures of his, equally {*sic*} 1,382 signatures.

Since State Statute expressly forbids a person to sign a petition more than once, I did not consider this document to meet the requirement for submitting a petition, which is the collection of signatures of 15% of the registered voters of the Village. Mr. Grinn demanded something in writing explaining my refusal to accept his petition so that he could take whatever measures were necessary. I called the Village Attorney, George Baldwin, and told him what was occurring and he agreed with the position I was taking. This call was made in the presence of Mr. Grinn, Mrs. Traugott, and Deputy Clerk Melissa Teal.

Mr. Grinn was very angry and again demanded my refusal in writing so that he could take necessary steps. Since this document did not constitute a proper petition, I did not "take" his document, and did not feel I was obligated to write anything. I told him that, and mentioned that Mrs. Traugott was a witness to this. Mr. Grinn replied "She's a liar". I also asked him if he was aware that knowingly signing a petition was against the law. He said "show me". I did not show him the statute at this time.

At that point, my Deputy Clerk, Melissa Teal, spoke up and said she was a witness. Mr. Grinn agreed that Melissa would be acceptable as a witness.

Mr. Grinn then demanded that I give him a "receipt". I refused, because I was not accepting his papers. He refused to take the papers back, saying he was leaving them in my office, saying "they are in your hands and are now Public Record". Mr. Grinn then left my office.

Village Manager Dennis Kelly came into my office at this time and I told him what had happened. Then Mayor Valente arrived, and I explained the situation to him.

I called George Baldwin again (approximately 5:20 p.m.) to ask what I should do with the papers that Mr. Grinn had left in my office. Mr. Baldwin did not think it was necessary that I do anything with them, since Mr. Grinn refused to take them with him

and chose to leave them here.

At this time. I locked my office and went home. I called Mr. O'Meilia and Dr. Marks at their homes to let them know the status of the petition and the position I took. I also called Gail Vastola, who was not at home. Larry Kelley was out of town and could not be reached.

On Monday, August 21, 1995, Mr. O'Meilia requested certified copies of two signature pages containing all Immanuel Grinn signatures and accompanying affidavits, and certified copies of two signature pages containing various residents' signatures, with accompanying affidavits. These certified copies were provided as requested. Mr. O'Meilia came into the office after lunch to get the copies and pay the copying charges.

SIGNATURE: "s/ Kathleen Kelly" WITNESS "s/ R.P."
NOTARIZED PER F.S.S. 117.19
NPBPD
8/21/95

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

IMMANUEL GRINN,)
)
Plaintiff,)
)
Case No. 97-8122-CIV-RYSKAMP
vs.)
)
VILLAGE OF NORTH PALM BEACH,)
et al,)
)
Defendants.)
_____/

PLAINTIFF'S MOTION FOR THIS HONORABLE COURT TO LIBERALLY CONSTRUE PLEADINGS OF PLAINTIFF

COMES NOW Immanuel Grinn, Counsel *pro se*, and files this Motion and petitions this Honorable Court to liberally construe pleadings of the Plaintiff.

Authorities:

"To insure that pro se complaints are given fair and meaningful consideration, they are liberally construed, however inartfully pleaded." *Talley v Lane 13 F.3d 1031, 1033 (7th Cir. 1994).*

"{T}his court is cognizant of the fact that, where the {pleader} is a pro se litigant, the {pleader's} complaint is held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)." *Moreno v. Macaluso, 844 F. Supp. 736, 737 (M.D. Fla.*

1994).

"As plaintiff is representing himself, his complaint will be construed liberally." *Olson v. Stotts 9 F3d 1475, 1476 (10th Cir. 1993).*

"District Courts are required to liberally construe *pro se* complaints, however inartfully pleaded." *Castillo v. Cook County Mail Room Dept., 990 F.2d 304, 307 (7th Cir. 1993).*

"{*P*}*ro se* pleadings are entitled to liberal construction {...}" *Eichelberger v. Brueckheimer, 613 So.2d 1372, 1373 (Fla.App. Dist 2. 1993).*

"As plaintiff is representing himself, his complaint will be construed liberally. Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)." *Olson v. Stotts, 9 F.3d 1475, 1476 (10th Cir. 1993).*

" The pleadings of a *pro se* litigant are to be held to less stringent standards than those drafted by an attorney. *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)." *Olsen v. Lane, 832 F.Supp. 1525, 1527 (M.D. Fla. 1993).* Also *Edison v. Arenas, 837 F.Supp. 1158, 1160 (M.D. Fla. 1993).* Also *Clark v. Sierra, 837 F. Supp. 1179, 1180 (M.D. Fla. 1993).*

"{T}the court endeavors carefully to accord persons appearing without benefit of counsel all the benefits of due process and interpret the pleadings of such persons liberally." *U.S. v. Cooley, 787 F. Supp. 977, 992 (D. Kan. 1992).*

"As we have often noted, the district court is required to liberally construe the *pro se* plaintiff's pleadings, 'however inartfully pleaded.' *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 ... (1976) ... The purpose of this more solicitous review is to insure that *pro se* pleadings are given 'fair and meaningful consideration.' *Matzker v. Herr*, 748 F.2d 1142, 1146 (7th Cir. 1984) (quoting *Caruth v. Pinckney*, 683 F.2d 1044,

1050 (7th Cir. 1982). *Rickerts v. Midwest Nat'l Bank*, 874 F.2d 1177, 1183 (7th Cir. 1989)." *Pearson v. Gatto, 933 F.2d 521, 527 (7th Cir. 1991).*

" *Pro se* pleadings are held to ' a less stringent standard than pleadings drafted by attorneys.' *Byrd v. Stewart*, 811 F.2d 554, 555 (11th Cir. 1987)." *Fernandez v. U.S., 941 F.2d 1488, 1491 (11th Cir. 1991).*

" Pro se pleadings are to be held to a less stringent standard than pleadings drafted by attorneys. *Watson v. Ault*, 525 F.2d 886 (5th Cir. 1976)." *Byrd v. Stewart, 811 F.2d 554, 555 (11th Cir. 1987).*

"As the Court unanimously held in Haines v Kerner, 404 US 519, 30 L Ed 2d 652, 92 S Ct 594 (1972), 'a pro se complaint, however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers' and can only be dismissed for failure to state a claim if it appears ' "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" ' Id., at 520-521, 30 L Ed 2d 652, 92 S Ct 594, quoting Conley v Gibson, 355 US 41, 45-46, 2 L Ed 2d 80, 78 S Ct 99 (1957)." *Justice Marshall for the Court, Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251, 261 (1976).*

" In *Haines v. Kerner*, 1972, 404 U.S. 519, 93 S. Ct. 594, 30 L.Ed.2d 652, the court placed a gloss on ordinary notice pleading concepts by holding that a pro se prisoner complaint is governed by ' less stringent standards than formal pleadings drafted by lawyers.' 404 U.S. at 520, 92 S.Ct. at 593, 30 L.Ed.2d at 654." *Watson v Ault, 525 F.2d 886, 891 (5th Cir. 1976).*

" {U}nder the allegations of the pro se complaint {...} we hold to less stringent standards than formal pleading drafted by lawyers." *Per Curiam, Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct 594, 595-596, 30 L.Ed.2d 652,654 (1972)*

I hereby certify that ten true and correct copies of the foregoing PLAINTIFF'S MOTION TO LIBERALLY CONSTRUE PLEADINGS OF THE PLAINTIFF has been furnished by mail this 9th day of March 1997 addressed to the Village of North Palm Beach, 501 U.S. Highway 1, North Palm Beach, FL. 33408.

Respectfully submitted
BY: Immanuel Grinn
(SIGNATURE BELOW)

Counsel *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720
Tel: (561) 626-5425

FILED
JUL 29 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 98-49

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

IMMANUEL GRINN,

Petitioner,

v.

VILLAGE OF NORTH PALM BEACH, et al.

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals, for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Rhea P. Grossman
RHEA P. GROSSMAN, P.A.
Counsel for Respondents,
VILLAGE OF NORTH PALM BEACH, et al.
2780 Douglas Road,
Suite #300
Miami, Florida 33133-2749
(305) 448-6692

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

TABLE OF CONTENTS

Page

PARTIES TO THE PROCEEDINGS . . . i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINION BELOW 1

REPLY TO STATEMENT OF CASE 1

ARGUMENT

I. **NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION PRESENTED BY THE PETITION** 6

II. **THE DISMISSAL OF PETITIONER'S COMPLAINT WITH PREJUDICE DID NOT DENY PETITIONER DUE PROCESS** 10

CONCLUSION 26

TABLE OF AUTHORITIES

Page(s)

Adkinson v. The Municipal Recall Committee of June 7, 1985, 488 So.2d 621 (Fla. 1st DCA 1986).. 16

Bank v. Pitt, 928 F.2d 1108 (11th Cir. 1991) .. 11

Bennett v. Parker, 898 F.2d 1530 (11th Cir. 1990) ... 22

Buckner v. Lower Florida Keys Hospital Dist., 403 So.2d 1025 (Fla. 3rd DCA 1981).. 24

Collins v. City of Harker Heights, 403 U.S. 115 (1992) 17,19

Conley v. Gibson, 355 U.S. 41 (1957) 11

County of Oklahoma v. Tuttle, 471 U.S. 808(1985) 18, 20

Depew v. City of St. Mary's Georgia, 787 F.2d 1496 (11th Cir. 1986).....17,20

Fernandez v. United States, 941 F.2d 1488 (11th Cir. 1991) 9

Guthry v. Florida Power and Light, 460 So.2d 1032 (Fla 3rd DCA 1985).... 25

Harper v. Thomas, 988 F.2d 101(11th Cir. 1993)..... 9

Libertarian Party of Florida v. State of Florida, 710 F.2d 790 (11th Cir. 1983)..... 15

Loeb v. Geronemus, 66 So.2d 241(Fla. 1953)..... 24

Mitchell v. Forsyth, 472 U.S. 511 (1985) 22

Monell v. Department of Social Services of New York, 436 U.S. 658, 694 (1978) 17,19

Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So.2d 607(Fla. 4th DCA 1975)...23

Patula Elec. Membership Corp. v. Whitworth, 951 F.2d 1238(11th Cir.)..... 9

Post v. City of Ft. Lauderdale, 7 F.3d 1552 (11th Cir. 1993)... 21

Shidlowsky v. National Car Rental Systems, Inc., 344 So.2d 903 (Fla. 3rd DCA 1977)..24

State v. Brown, 298 So.2d 487 (Fla. 4th DCA 1974)..12

Trushin v. State, 384 So.2d 668 (Fla. 3rd DCA 1980)..13

Veltmann v. Walpole Pharmacy, Inc., 928 F.Supp. 1161 (M.D.Fla. 1996).. 20

Westwood Lake, Inc. v. Dade County,
264 So.2d 7 (Fla. 1972) 13

Weissman v. K-Mart Corp.,
396 So.2d 1164 24

Other Authorities:

Federal Rule of Civil Procedure
12(b)(b) 22

Florida Statutes §104.185 ...11,12,17,24

28 U.S.C. §1254 6

28 U.S.C. §636 7

Rule 7.1.B, General Rules
of the United States
District Court, Southern District
of Florida 8

Supreme Court Rule 10 ..... 6, 10

Op.Atty.Gen., 064-3,
January 15, 1964 12

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

This appeal is from the decision of the United States Court of Appeals for the Eleventh Circuit in *Grinn v. Village of North Palm Beach, et al.*, an unpublished opinion dated January 29, 1998, Case No. 97-5044 (App.A-1)and an order denying the petition for rehearing dated April 15, 1998 (App.B-2). The Respondents respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Eleventh Circuit's opinion in this case.

REPLY TO STATEMENT OF THE CASE

The Respondents submit the following Reply to Statement of the Case to present

to the Court the areas of disagreement with the statement submitted by Petitioner, and to supply important information that has been omitted.

Petitioner's complaint was not as complicated as he would have this Court believe. Petitioner, in the District Court, was seeking redress for an alleged constitutional wrong, i.e., that the Respondent VILLAGE OF NORTH PALM BEACH refused to validate a citizen's petition to repeal an ordinance passed by the Village council. In his complaint (App.J-1), the Petitioner sought:

(1) to declare *Florida Statutes §104.185* unconstitutional, on its face or as applied to the Petitioner;

(2) to declare *Article III, Section 10 of the Village Charter* unconstitutional as applied to the Petitioner;

(3) to determine that the individual Respondents, in both their official and individual capacities violated Petitioner's civil rights; and

(4) to determine that the individual respondents, in both their official and individual capacities maliciously prosecuted the Plaintiff.

According to the allegations in the complaint, the Petitioner alleged that

1. The VILLAGE OF NORTH PALM BEACH and its employees deprived the Petitioner of his right to petition the government for redress regarding an ordinance passed on July 17, 1995, known as Ordinance No. 22-95.

2. Petitioner claimed that on August 16, 1995, he presented signed signature sheets in accordance with Section III, Article 10 of the Village Charter for filing a petition for a referendum on

Ordinance No. 22-95. The **Village Clerk refused the signature sheets because the requisite number of signatures was missing.**

3. On that same day, ten minutes before the deadline for filing, Petitioner returned with the required signature sheets, however, the **Clerk again refused to accept the signature sheets as a petition because there were multiple signatures of the Petitioner.** Petitioner notified the Village council on August 24, 1995, that the Clerk violated his rights.

4. The Petitioner learned that on August 24, 1995, Respondent O'MEILIA filed charges against Petitioner for violation of *Florida Statutes §104.185*. The charges were eventually dismissed.

Respondents filed a motion to dismiss the complaint. The District Court referred the matter to the Magistrate

Judge. Contrary to the assertions of the Petitioner, the Magistrate Judge did not rule on the motion to dismiss but merely prepared and filed a report and recommendation (App.D-1).

At no time did the Petitioner object to the jurisdiction of the Magistrate Judge.

The District Judge reviewed the Report and Recommendation of the Magistrate Judge and issued an Order granting the motion to dismiss and dismissing the complaint with prejudice (App.C-2).

On appeal to the Eleventh Circuit, the Petitioner never raised the procedural issues that he now brings to this Court. The Eleventh Circuit considered the District Court's order, *de novo,* and rendered an unpublished opinion affirming the dismissal (App.A-1).

ARGUMENT

I.

NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION PRESENTED BY THE PETITION

A review on writ of certiorari is not a matter of right, but of judicial discretion. *28 U.S.C. §1254* provides that "[c]ases in the courts of appeals **may** be reviewed by the Supreme Court..." *Supreme Court Rule 10* specifically notes that 'Review on a writ of certiorari is not a matter of right, but of judicial discretion."

The Petitioner set out four (4) questions he is presenting to this Court. However, in actuality, the sole issue is whether his procedural due process was violated because the District Court granted Respondent's Motion to Dismiss with Prejudice and without leave to

amend. A peripheral issue seems to be that the District Court and the Eleventh Circuit used the wrong standard for evaluating his complaint, that is, the need for "heightened pleading" in civil rights matters.

First, the District Judge, pursuant to *28 U.S.C. §636,* exercised its discretionary jurisdiction to appoint a magistrate to hear and determine pretrial matters. The Magistrate Judge did not rule on the motion to dismiss which was based on a failure of the Petitioner to state a claim upon which relief can be granted. The Magistrate Judge merely filed a Report and Recommendation (App.D-1). The District Judge reviewed the file, record and Report and entered its own order dismissing the complaint (App.C-2). The Petitioner had ample opportunity to present all relevant information and exhibits prior to the

rulings of the Court and recommendations of the Magistrate. Nothing in this procedure is violative of the Rules of Procedure or local rules governing the practice before the District Court, Southern District of Florida.

There is nothing to indicate that oral argument on these pretrial matters would have produced any different result. In fact, had Petitioner wanted or desired oral argument, *Rule 7.1 B, General Rules of the United States District Court, Southern District of Florida*, provides a procedure for oral argument of which the Petitioner did not avail himself.

The Eleventh Circuit reviewed the record, *de novo*, and issued an opinion which stated (App.A-3):

> This Court review *de novo* the dismissal of a complaint for failure to state a claim, accepting all allegations in the

> complaint as true and construing facts in a light most favorable to the plaintiff. *Harper v. Thomas*, 988 F.2d 101, 103 (11th Cir. 1993). A complaint may not be so dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Patula Elec. Membership Corp. V. Whitworth*, 951 F.2d 1238, 1240 (11th Cir.), *cert. denied*, 506 U.S. 907 (1992) (citations omitted). In a *pro se* action, a court should construe a complaint more liberally than it would pleadings drafted by lawyers. *Fernandez v. United States*, 941 F.2d 1488, 1491 (11th Cir. 1991).

The Eleventh Circuit's unpublished decision negates the Petitioner's claim that the wrong standard[1]/ was applied in evaluating the sufficiency of the complaint and granting the Respondent's motion to dismiss since the Eleventh

---

[1]/ Respondents do not concede that the District Court used the wrong standard, and in fact, as the argument will show, the correct standard was used both by the District Court and the Eleventh Circuit.

Circuit construed Petitioner's complaint "liberally" when reviewing the District Court's order *de novo*.

The Eleventh Circuit's unpublished opinion is not in conflict with any decision of another United States court of appeals; does not decide an important federal question that conflicts with a decision by a state court and the decision does not depart from the accepted and usual course of judicial proceedings. The petition should be denied. *Supreme Court Rule 10.*

II.

THE DISMISSAL OF PETITIONER'S COMPLAINT WITH PREJUDICE DID NOT DENY PETITIONER DUE PROCESS

Petitioners' argument is centered around his allegations that he was not given an opportunity to amend his complaint and that the District Court used

a "heightened standard" test in determining the sufficiency of his complaint when granting the Respondents' motion to dismiss. These allegations are without merit.

Amendments to complaints are not required if a plaintiff indicates that he does not wish to amend or if a more carefully drafted complaint could not state a claim under the standard of *Conley v. Gibson*, 355 U.S. 41 (1957). *Bank v. Pitt*, 928 F.2d 1108 (11th Cir. 1991).

In this case the Petitioner could not state a claim no matter how he tried to amend his complaint.

In Count I, GRINN challenges *Florida Statute §104.185*, which provides:

> It is unlawful for any person knowingly to sign a petition or petitions for a particular issue or candidate more than one

> time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

This statute is part of *Chapter 104, Florida Statutes* and is referred as the *Corrupt Practices Act*, which Act is applicable to all elections in the State of Florida, including municipal elections. *State v. Brown*, 298 So.2d 487 (Fla. 4th DCA 1974); *Op.Atty.Gen.*, 064-3, January 15, 1964.

Florida Statute §104.185 is neither facially unconstitutional nor was it applied to the Plaintiff in an unconstitutional manner as determined by the Magistrate. In fact, the Magistrate specifically found that the statute is neither vague, unclear nor overly broad, and should be given a construction which preserves its

constitutionality, relying upon *Trushin v. State*, 384 So.2d. 668 (Fla. 3rd DCA 1980), *aff'd*, 425 So.2d 1126 (Fla. 1982).

The statute certainly has not been arbitrarily applied to GRINN, especially in light of GRINN'S own admission in his complaint that there were "multiple signatures of the Plaintiff on the signature sheets". *Compare, Westwood Lake, Inc. v. Dade County*, 264 So.2d 7 (Fla. 1972). **The Magistrate concluded that GRINN "should not be permitted to hide his blatant wrongdoing behind empty allegations of constitutional wrongdoing and, therefore, his first count should be dismissed for failure to state a claim".**[emphasis added]

Count II of the complaint is similarly lacking of any legal or factual merit. GRINN'S claim regarding the Village Charter is merely that the

specific charter provision is unconstitutional as it applies to him. GRINN claims that the action of the Village Clerk by not accepting the signature sheets was "manifestly violative of letter and spirit of Article III, Section 10 as well as past Village practices and precedent in its application. However, as noted by the Magistrate, nowhere does GRINN explain the past Village practices and precedent. GRINN admits that he did not have the appropriate signatures when he first attempted to file the petition and admits that his signature appeared on various sheets in order to conform with the lack of the required number of signatures when he again attempted to file the petition. So, too, GRINN admits that the Village Clerk did not accept the petition because there were too few signatures.

The Village Charter makes it mandatory that the petition be signed by qualified voters of the Village equal in number to at least fifteen percent[2]/ of the total number of qualified voters registered to vote at the last regular Village election. GRINN does not set forth any allegation that he had the "required signatures" only that he was not given a chance to supplement the signatures after the petition was "certified insufficient" under the provisions of the Village Charter. The procedure outlined in the Village charter and followed by the Village clerk is constitutional and there are no facts in GRINN'S complaint that

---

[2]/ There is no equal protection violation as it relates to initiative petitions and the required or necessary signatures of registered voters. *Cf. Libertarian Party of Florida v. State of Florida,* 710 F.2d 790 (11th Cir. 1983), *cert. denied* 105 S.Ct. 117.

show this charter provision was applied unconstitutionally. GRINN simply did not have the required number of signatures (without verification) to file the petition initially. *Compare, Adkinson v. The Municipal Recall Committee of June 7, 1985*, 488 So.2d 621 (Fla. 1st DCA 1986).

The Magistrate, in recommending that Count II of the complaint was insufficient on its face and should be dismissed, stated that "**Grinn apparently believes the Court should fashion a system which would permit one solitary person to meet procedural filing requirements by merely signing his own name over and over again**" [emphasis added].

GRINN'S claim in Count III of his complaint is against the VILLAGE and the individual defendants/appellees in their official and personal capacities for

intentionally depriving him of his constitutional rights by refusing to accept his proffered signature pages for the petition and by conspiring to arrest him for violating *Florida Statute §104.185.*

In order to hold the Village (and its employees in their official capacities) liable under *§1983*, GRINN had to establish facts that would show that his injuries were inflicted by the Village's employees as a result of a policy or custom of the Village which policy or custom was the "moving force" behind the constitutional injury. *Collins v. City of Harker Heights*, 503 U.S. 115, 121-122 (1992); *Monell v. Department of Social Services of New York*, 436 U.S. 658, 694 (1978). "Section 1983 provides a fault-based analysis for imposing municipal liability." *Depew v. City of St. Mary's Georgia*, 787 F.2d 1496, 1499 (11th Cir. 1986). Therefore, even if

the plaintiff is able to establish that the municipality had a custom or policy, in order to hold the municipality liable under §1983, the plaintiff must also establish that the custom or policy caused the subject deprivation. *Id.* In order "[t]o establish a policy or custom, it is generally necessary to show a persistent and widespread practice. Moreover, actual or constructive knowledge of such customs must be attributed to the governing body of the municipality. Normally random acts or isolated incidents are insufficient to establish a custom of policy." *Id.*. Proof of a single incident of unconstitutional activity generally is not sufficient to impose liability on a municipality under §1983 unless the policy or custom is itself unconstitutional. *County of Oklahoma v. Tuttle*, 471 U.S. 808, 823-824 (1985).

The Magistrate correctly determined that:

> The nine (almost uniformly one-sentence-long) paragraphs which make up count III are a stew of legal adjectives and conclusory allegations which utterly fail to provide any guidance, let alone a clear statement of the facts upon which plaintiff relies; the only factual allegations are that Defendant K. Kelly (the Village Clerk) did not accept the petitions and that Defendant O'Meilia filed charges against him. While the Court is certain that these two defendants are immunized from suit for their actions [footnote omitted], that analysis is unnecessary since Plaintiff has utterly failed to provide any facts which establish that his (alleged) injuries were inflicted by the village's employees as a result of a policy or custom which was the "moving force" behind the constitutional injury. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 121-22 (1992); *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 694 (1978). Here, Plaintiff cannot show even a single isolated policy or custom of the Village or its employees that is itself unconstitutional; let alone make

> the requisite showing of a persistent and widespread practice that is violative of his or other's civil rights. *See County of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985) and *Depew v. City of St. Marys, Georgia*, 787 F.2d 1496, 1499 (11th Cir. 1986). Furthermore, **Plaintiff cannot succeed in arguing bad faith on the part of the Clerk in not accepting his proffered petition since it clearly violated Florida law (not to mention the common sense notion that one can't sign a petition more than once).** [emphasis added]

The claims against the individual defendants, in their individual capacities, cannot stand no matter how many times the Petitioner sought to amend his complaint. There is no clear statement of grounds on which GRINN relies other than KATHLEEN F. KELLY, as Village Clerk, did not accept the petitions and Respondent CHARLES R. O'MEILIA, "filed charges against [Petitioner]". *See Veltmann v. Walpole Pharmacy, Inc.*, 928 F.Supp 1161

(M.D.Fla. 1996). And, as to these two individuals, O'MEILIA and KELLY, the complaint clearly indicates that they are entitled to a dismissal on the basis of their qualified immunity which the Magistrate acknowledged but did not specifically rule upon. The individual Respondents are qualifiedly immune from not only liability, but from suit itself. Specifically, and under Federal Law, qualified immunity protects a governmental official performing discretionary functions from civil liability if their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known. *Post v. City of Fort Lauderdale*, 7 F.3d 1552 (11th Cir. 1993). The defense of qualified immunity is a legal defense which may be raised on a pretrial motion

to dismiss under *Federal Rule of Civil Procedure 12(b)(6)* for failure to state a claim. *Bennett v. Parker*, 898 F.2d 1530, 1535 n.2 (11th Cir. 1990). Qualified immunity is not an "affirmative defense". Qualified immunity is a bar from litigation. *Mitchell v. Forsyth*, 472 U.S. 511 (1985). When a suit is barred by the doctrine of qualified immunity on the face of the pleading, and no offer of evidence to the contrary would be available to a plaintiff, a motion to dismiss is the proper vehicle to dispose of the litigation. *Bennett v. Parker*, 898 F.2d 1530, 1535 n.2 (11th Cir. 1990). No amount of amendments would give the Petitioner a cause of action against these individual Respondents. The District Court correctly dismissed Count III with prejudice.

As to Count IV, GRINN attempted to

set forth a cause of action against all of the Respondents on the basis of "conspiracy". In order to make sense of his allegations, it is necessary to interpret this count as claim for damages arising out of a conspiracy to maliciously prosecute GRINN, which the Magistrate did.

There is no cause of action for "conspiracy". As noted in *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So.2d 607, 609 (Fla. 4th DCA 1975), "[t]he gist of a civil action for conspiracy is not the conspiracy itself but the civil wrong which is alleged to have been done pursuant to the conspiracy. Therefore, whether the complaint involved in this appeal alleges facts sufficient to state a cause of action must be determined from the standpoint of whether the complaint states a cause of action in * * *

libel", quoting from *Loeb v. Geronemus*, 66 So.2d 241, 243 (Fla. 1953). *See also Buckner v. Lower Florida Keys Hospital Dist.*, 403 So.2d 1025 (Fla. 3rd DCA 1981). In the present case, GRINN must set orth a cause of action for malicious prosecution. Of the six elements required to be plead, *Weissman v. K-Mart Corp.*, 396 So.2d 1164, 1167 (Fla. 3rd DCA 1981); *Shidlowsky v. National Car Rental Systems, Inc.*, 344 So.2d 903 (Fla. 3d DCA 1977), *cert. denied*, 355 So.2d 516 (Fla. 1978), the petitioner cannot, regardless of how many times he amends, set forth the element of lack of probable cause. As the Magistrate pointed out, GRINN admitted his own violation of *F.S. §104.'85.* That alone is sufficient to defeat such a cause of action. Further, the intervening acts of a prosecutor break the chain of causation

unless the plaintiff can show that these intervening acts were the result of deception or undue pressure by the defendants. *Guthry v. Florida Power and Light*, 460 So.2d 1032 (Fla. 3rd DCA 1985). The Magistrate's Report and Recommendation was legally and procedurally correct and the District Court did not err in adopting the Report and ordering the complaint dismissed with prejudice. The Eleventh Circuit reviewed the record *de novo* and found that the Petitioner could not prove any facts that would entitled him to relief. There is no basis for allowing Petitioner to amend his complaint and no basis to find that Petitioner's procedural due process rights were violated because he had no oral argument on the motion to dismiss or that an "improper standard" was applied.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RHEA P. GROSSMAN
RHEA P. GROSSMAN, P.A.
Counsel for Respondents,
VILLAGE OF NORTH PALM BEACH, et al.
2780 Douglas Road,
Suite #300
Miami, Florida 33133-2749
(305) 448-6692

FILED
AUG 14 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(4)

NO. 98-49

In The

SUPREME COURT of the UNITED STATES

October Term, 1997

Immanuel Grinn,

Petitioner,

vs.

Village of North Palm Beach, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITIONER'S REPLY BRIEF

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425

12 pp

TABLE OF CONTENTS

	page
Table of Contents	i
Rebuttal	1
Conclusion	8

TABLE OF CITATIONS

Cases cited:

Adkinson v. Municipal Recall Committee, 488 So.2d 621 (Fla.App 1 Dist. 1986)	4
Basic Energy v. Hamilton County, 652 So.2d 1238 (Fla.App. 1 Dist. 1995)	4
Buckner v. Lower Florida Keys Hospital Dist., 403 So.2d 1025 (Fla. App. 3 Dist. 1981)	5
City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla.1983)	3
City of Ocala v. Nye, 608 So.2d 15 (Fla.1992)	3-4
City of Winter Park v. Montesi, 448 So.2d 1242 (Fla.App. 5 Dist. 1984)	3
Guthrie v. Florida Power & Light Co., 460 So.2d 1032 (Fla.App. 3 Dist 1985)	6
Loeb v. Geronemus, 66 So.2d 241 (Fla. 1953)	5
Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So.2d 607 (Fla.App. 4 Dist. 1975)	5

page

State v. Brown, 298 So.2d 487 (Fla. 4th DCA 1974) 3

State v. Bussey, 463 So.2d 1141 (Fla.1985) 4

State v. City of Sunrise, 354 So.2d 1206 (Fla.1978) 3

Thomas v. State, 614 So.2d 468 (Fla.1993) 4

United States Statutes Cited:

28 U.S.C. § 636 1

28 U.S.C. § 636(b)(1) 2

United States Rules Cited:

Supreme Court Rule 10 7

Fed.R.Civ.P. Rule 8(a)(2) 1

Fed.R.Civ.P. Rule 8 (f) 8

Magistrate Rules of the Local Rules of the Southern District of Florida 1

Rule 7.1B, General Rules of the United States District Court, Southern District of Florida..... 2

Florida Constitution Cited:

Article VIII, §2(b) 3

Florida State Statutes Cited:

§ 11.242 4

§ 104.185 2,3

page

§166.021 (4) 3

§166.042..... 3

Other Authorities Cited:

The Bible, Deuteronomy, 16:20. 8

Op.Atty.Gen., 064-3, January 15, 1964..... 3

The Federalist, No.51, Jacob E. Cooke, Ed., Wesleyan University Press (1961) p.352 8

I, Immanuel Grinn, *pro se*, file this Reply Brief addressed to new points raised in the Respondent's Brief in Opposition.

Throughout this Reply Brief, where braces {} appear, they are indices of my intrusions in cited quotations. Where bold type appears, **my** emphasis is to be inferred.

On page 5 of the Village of North Palm Beach's Respondent's Brief in Opposition (RBO) the Village states: "At no time did the Petitioner object to the jurisdiction of the Magistrate Judge." In my opinion, there was nothing to object to. The Order of Reference filed March 3, 1997 states:

> PURSUANT to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida, the above-captioned Cause is hereby referred pretrial to United States Judge Ann E. Vitunac to take all necessary and proper action as required by law and/or to submit a Report and Recommendation to this Court.

As the Village states in RBO page 7, pursuant to 28 U.S.C. § 636 the District Judge appointed "a magistrate to **hear and** determine pretrial matters." **But I never had a hearing**. The magistrate made determinations and issued her Report and Recommendation filed April 23, 1997. On May 2, 1997, I filed a 14 page, ten Exhibit Response to the Report and Recommendation.

The Village states (RBO pages 7-8) that I had "ample opportunity to present **all** relevant information and exhibits prior to the rulings of the Court and recommendations of the Magistrate." According to FRCP 8(a)(2): "A pleading which sets forth a claim for relief ... shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." I attempted to do just that. As I wrote repeatedly in my submittals, many more exhibits would be produced at hearings and trial.

The Village refers (RBO page 8) to *Rule 7.1B, General Rules of the United States District Court, Southern District of Florida* which "provides a procedure for oral argument of which the Petitioner did not avail himself." Rule 7.1B refers to hearings on **motions.** "No hearing will be held on motions unless set by the Court." I interpret the Complaint as separate and distinct from a motion. 28 U.S.C. § 636(b)(1) stipulates that when a judge designates a magistrate on a motion "to dismiss for failure to state a claim upon which relief can be granted", the magistrate is "to conduct hearings, including evidentiary hearings. ..."

The Village asserts on RBO, page 11 that "the Petitioner could not state a claim no matter how he tried to amend his complaint." In all my submissions to the courts, I laid out undisputed facts in the case, included evidentiary exhibits, and made allegations of constitutional violations supported by those facts and exhibits. Essential elements of my argument were misconstructed in that the courts below deemed that insufficient evidence was submitted by me to back up my claim. As described in my *Petition for Writ of Certiorari*, I included additional exhibits in the written communications with the courts below, which were not acknowledged in the courts' opinions.

With few exceptions (see *infra*), from the last paragraph on page 11 to most of the paragraph on page 25, the RBO is almost a word for word (including scrivener errors) regurgitation of pages 7 through 17 of the Village's *Brief of Appellees* (BOA) filed with the United States Court of Appeals on September 17, 1997. In the main, I can do no better than I did in my *Appellant Reply Brief* (ARB) filed December 17, 1997, where I based my argument in large part using other citations from the very same case law or showing that the context of the case law cited by the Village was not analogous to the instant Complaint.

In my ARB, I did not adequately address all the assertions by the Village in the BOA, *e.g.*, RBO pages 11-12, wherein the Village quotes *Florida Statute § 104.185.* I had, however, done so earlier on page 4 in my reply, filed April 8, 1997, to the Village's Motion to Dismiss.

The Village's assertion is:

This statute is part of *Chapter 104, Florida Statutes* and is referred as the *Corrupt Practices Act*, which *Act* is applicable to all elections in the State of Florida, including municipal elections. *State v. Brown*, 298 So.2d 487 (Fla. 4th DCA 1974); *Op.Atty.Gen.*, 064-3, January 15, 1964.

My reply was:

13. In answer to DMDp4Π5, Plaintiff denies that Florida Statute 104.185 is applicable to all elections in the State of Florida.

a) The opinion of the Attorney General of January 15, 1964 cited in *State v. Brown*, 298 So.2d 487 (Fla. 4th DCA 1974) was prior to the revision of the State Constitution in 1968 with the new language of Article VIII, §2(b), which reflected the new "home rule" philosophy of the State Legislature. The enabling legislation F.S.§166.042 and F.S. §166.021 (4) (with its "***express***" language) were filed June 8, 1973 and took effect October 1, 1973. The decision of August 9, 1974 in *State v. Brown* was premised on an indictment of February 1973. *See* Point G, Points and Authorities soon to be submitted by Plaintiff.

b) The intent of the Florida Legislature when it promulgated and passed the language in the Statute was to regulate ***State*** petitions (*See* Exhibit D in Plaintiff's original Complaint).

c) The application of Statute 104.185 to municipal elections is contrary to Article VIII, §2(b), Florida Constitution and enabling legislation of Florida Chapter 166 ("Municipal Home Rule Powers Act"). *See State v. City of Sunrise, 354 So.2d 1206, 1209 (Fla.1978)* {R1-26-9}; *City of Boca Raton v. Gidman, 440 So.2d 1277, 1280 (Fla.1983)* {R1-26-9,10}; *City of Winter Park v. Montesi, 448 So.2d 1242, 1243 (Fla.App. 5 Dist. 1984)* {R1-26-10,11}; *City of Ocala v. Nye, 608 So.2d 15, 17*

(Fla.1992) {R1-26-11}; *Thomas v. State, 614 So.2d 468, 472 (Fla.1993)* {R1-26-11,12}; *Basic Energy v. Hamilton County, 652 So.2d 1238, 1238 (Fla.App. 1 Dist. 1995)* {R1-26-11}. {R1-25-4}

To counter the possible implication of the Village's clause that *Chapter 104* is referred to as the *Corrupt Practices Act*, I stated in my ARB, page 6: "Physical placement and location of the statute is not determinative of legislative intent. *See State v. Bussey*, 463 So.2d 1141, 1143 (Fla.1985)." I quoted the applicable portion on page 2 of the addendum:

> The arrangement and classification of laws for purposes of codification in the Florida Statutes is an administrative function of the Joint Legislative Management Committee of the Florida Legislature § 11.242, Fla.Stat. (1983). The classification of a law or part of a law in a particular title or chapter of Florida statutes is not determinative on the issue of legislative intent, though it may be persuasive in certain circumstances.

In RBO, page 16, the Village invites comparison to *Adkinson v. The Municipal Recall Committee of June 7, 1985*, 488 So.2d 621 (Fla. 1st DCA 1986). In *Adkinson* the petitions were received and filed. In the instant case, the petitions were never filed nor received by deadline. Furthermore, as I pointed out on page 7 in my reply filed April 8, 1997 to the Defendants' Motion to Dismiss:

> 23. *Adkinson v. Municipal Recall Committee*, 488 So.2d 621 (Fla.App 1 Dist. 1986), is about compliance with regulations of procedure for recall petitions by petitioners. The Plaintiff Grinn in this case complied with all the regulations of the Village Charter ordinance. The Village refused the Plaintiff a "second bite of the apple" that is plainly allowed by the language of the ordinance and precedent written out by the Village Attorney. It is the Village that failed to comply with the procedures the Village instituted to regulate a First Amendment right.

The Village in RBO pages 23 and 24 cites *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, *Loeb v. Geronemus*, and *Buckner v. Lower Florida Keys Hospital Dist.* to support its contention that "There is no cause of action for conspiracy." *Orlando* was a business and libel suit; *Loeb* was a case referring to a church or social group, not a government; and *Buckner*, although centering on interference in a profession, in my citation, supports my position.

> This is an appeal from the entry of a final judgment dismissing with prejudice appellant's amended complaint which sought damages from appellees in count one: for malicious interference with business, count two: for libel and count three: for conspiracy to interfere with business relations and to libel. *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So.2d 607, 608 (Fla.App. 4 Dist. 1975).

> In respect to such a situation {"a matter of dissension in a church or social group as to differences of opinion"} the general rule is that statements and communications made in connection with the various activities of such an organization or group enjoy a qualified privilege {...} *"so long as they act without malice." Loeb v. Geronemus*, 66 So.2d 241,244 (Fla. 1953).

> {A}n action for conspiracy to interfere with one's profession (or conspiracy to commit any tort for that matter) requires that there has been a combination of two or more persons (or entities) seeking to accomplish an unlawful act or to accomplish a lawful act by unlawful means. *Buckner v. Lower Florida Keys Hospital Dist.*, 403 So.2d 1025, 1029 (Fla. App. 3 Dist. 1981).

On pages 24-25 of the RBO the Village cites *Guthry {sic} v. Florida Power and Light.* I have alleged that in the criminal trial that individual defendants intervened with undue pressure on the prosecutor to forestall amicable settlement of the criminal case. I submitted my transcript as Exhibit 9 with my Response to the Magistrate Judge's Report and Recommendation.

The criminal proceedings against me, as well as ancillary events, were caused by the Village employees named in the instant case.

> {T}he commencement of the criminal proceedings against Walter {Guthrie instead of William Guthrie} was not caused by the employees of FPL, but solely by mistake of the State Attorney { }. *Guthrie v. Florida Power & Light Co.*, 460 So.2d 1032, 1033 (Fla.App. 3 Dist 1985)

The changes from the BOA to the RBO that are more than *de minimis* are:

On page 17 eliminated is: a footnote in the last paragraph attached to the word "official" which cites case law.

On page 20 added is: "no matter how many times the Petitioner sought to amend his complaint."

On page 22 added is: "No amount of amendments would give the Petitioner a cause of action against those individual Respondents." Eliminated is: "GRINN has set forth no clearly established constitutional right which these DEFENDANTS intentionally violated and".

On page 24 added is: "Of the six elements required to be plead {*sic*},". Eliminated is: the enumerated listing of those six elements. Added is: "the petitioner cannot, regardless of how many times he amends, set forth the element of lack of probable cause." Eliminated is: "In the complaint, Grinn omits one important element, to wit: probable cause. In fact, Grinn cannot allege that there was a lack of probable cause since,".

On page 25 after the "*Guthry* {*sic*} cite, eliminated is:

> And finally, the allegation in the complaint that the charges were dismissed is not sufficient to establish the element of no probable cause since dismissal of a case involving a person accused of violating law is not sufficient to establish the absence of probable cause for instituting criminal proceedings

On page 25 added is: "and procedurally" and

> The Eleventh circuit reviewed the record *de novo* and found that the Petitioner could not prove any facts that would entitled {*sic*} him to relief. There is no basis for allowing Petitioner to amend his complaint and no basis to find that Petitioner's procedural due process rights were violated because he had no oral argument on the motion to dismiss or that an "improper standard" was applied.

On page 10 of the RBO, the Village cites selectively *Supreme Court Rule 10* to support its request that the petition be denied. In trepidation that my silence might be mistakenly interpreted as not knowing better, I note that the *Rule* prefaces the standards of calling for "an exercise of this Court's supervisory power" by stating that the "character of the reasons" are "neither controlling nor fully measuring the Court's discretion...." Furthermore, I feel that I met the Village-mentioned explicit standard that the decision of the United States court of appeals "has so far departed from the accepted and usual course of judicial proceedings" as well as the Village's unnoted explicit standard that the court of appeals has "sanctioned such a departure by a lower court."

CONCLUSION

Justice would be served by granting the Petition for Writ of Certiorari which seeks review of decisions that a first trial and/or hearing be denied me. "All pleadings shall be construed as to do substantial justice." *FRCP Rule 8(f)*. "Justice is the end of government. It is the end of civil society." *The Federalist, No.51*. "Justice, Justice above all, you shall pursue, in order that you may thrive, and inherit the domain which the Lord your God is giving you." *Deuteronomy, 16:20*.

Respectfully submitted

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425